A DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1915,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836—1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA; AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
1916

Price Four Rupees.
English Price Six Shillings.

Agents for the Sale of Books Published by the Superintendent of Government Printing, India, Calcutta.

IN EUROPE.

Constable & Co., 10, Orange Street, Leicester Square, London, W.C.

Kegan Paul, Trench, Trübner & Co., 68-74, Carter Lane, E.C., and 25, Museum Street, London, W.C.

Bernard Quaritch, 11, Grafton Street, New Bond Street, London, W.

P. S. King & Sons, 2 & 4, Great Smith Street, Westminster, London, S.W.

H. S. King & Co., 65, Cornhill, E.C., and 9, Pall Mall, London, W.

Grindlay & Co., 54, Parliament Street, London, S.W.

Luzac & Co., 46, Great Russell Street, London, W.C.

W. Thacker & Co., 2, Creed Lane, London, E.C.

T. Fisher Unwin, Ltd., 1, Adelphi Terrace, London, W.C.

B. H. Blackwell, 50 & 51, Broad Street, Oxford.

Deighton Bell & Co., Ltd., Cambridge.

Oliver and Boyd, Tweeddale Court, Edinburgh.

E. Ponsonby, Ltd., 116, Grafton Street, Dublin.

Ernest Leroux, 28, Rue Bonaparte, Paris.

Martinus Nijhoff, The Hague, Holland.

IN INDIA AND CEYLON.

Thacker, Spink & Co., Calcutta and Simla.

Newman & Co., Calcutta.

R. Cambray & Co., Calcutta.

S. K. Lahiri & Co., Calcutta.

B. Banerjee & Co., Calcutta.

The Indian School Supply Depôt, 309, Bow Bazar Street, Calcutta, and 226, Nawabpur, Dacca.

Butterworth & Co. (India), Ltd., Calcutta.

Rai M. C. Sarcar Bahadur & Sons, 75-1-1, Harrison Road, Calcutta.

The Weldon Library, 18-5, Chowringhee Road, Calcutta.

Standard Literature Company, Limited, Calcutta.

Lal Chand & Sons, Calcutta.

Higginbotham & Co., Madras.

V. Kalyanarama Iyer & Co., Madras.

G. A. Natesan & Co., Madras.

S. Murthy & Co., Madras.

Thompson & Co., Madras.

Temple & Co., Madras.

P. R. Rama Iyer & Co., Madras.

E. M. Gopalakrishna Kone, Madura.

Thacker & Co., Ltd., Bombay.

A. J. Combridge & Co., Bombay.

D. B. Taraporevala, Sons & Co., Bombay.

Mrs. Radhabai Atmaram Sagoon, Bombay.

Sunder Pandurang, Bombay.

Gopal Narayan & Co., Bombay.

Ram Chandra Govind & Son, Kalbadevi, Bombay.

A. H. Wheeler & Co., Allahabad, Calcutta and Bombay.

N. B. Mathur, Supt., Nazir Kanun Hind Press, Allahabad.

Rai Sahib M. Gulab Singh & Sons, Mufid-i-Am Press, Lahore.

Ram Krishna & Sons, Lahore.

A. Chand & Co., Lahore, Punjab.

Supt., American Baptist Mission Press, Rangoon.

Manager, the "Hitavada," Nagpur.

S. C. Talukdar, Proprietor, Students and Company, Cooch Behar.

A. M. & J. Ferguson, Ceylon.

Manager, Educational Book Depôts, Nagpur and Jubbulpore.*

Manager of the Imperial Book Depôt, 63, Chandney Chauk Street, Delhi.*

Manager, "The Agra Medical Hall and Co-operative Association, Ltd." (Successors to A. John & Co., Agra).*

Supt., Basel Mission Book and Tract Depository, Mangalore.*

P. Varadachary & Co., Madras.*

H. Liddell, Printer, etc., 7, South Road, Allahabad.*

D. C. Anand & Sons, Peshawar.*

Ram Dayal Agarwala, 184, Katra, Allahabad.*

Manager, Newal Kishore Press, Lucknow.*

* Agents for the Sale of Legislative Department publications only.

PREFACE.

THIS Volume is published as a supplement to the new Consolidated Digest, 1836-1909. It contains the cases reported in the four Series of the Indian Law Reports for 1915, and the Law Reports Indian Appeals, and the Calcutta Weekly Notes for the year 1914-15.

The different sets of Law Reports in which the same cases have been reported, are specifically noted in the " Table of Cases " published with this Volume.

For easy reference, several words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list arranged in alphabetical order, under the heading "Words and Phrases."

B. D. BOSE.

HIGH COURT, CALCUTTA :
The 19th July, 1916.

CONTENTS.

		Page.
HIGH COURT, CALCUTTA	1915	vii
HIGH COURT, BOMBAY		vii
HIGH COURT, MADRAS		viii
HIGH COURT, ALLAHABAD		viii
THE PRIVY COUNCIL		ix
TABLE OF REPORTS DIGESTED		x
TABLE OF HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES		xi
TABLE OF CASES IN THE DIGEST		xxiii
DIGEST OF CASES		Col. 1

THE HIGH COURT, CALCUTTA, 1915.

CHIEF JUSTICE:

The Hon'ble SIR LAWRENCE H. JENKINS, KT., K.C.I.E. (*retired Nov. 14, 1915*).
" " " JOHN GEORGE WOODROFFE, KT. (*Acting*).
" " " LANCELOT SANDERSON, KT., K.C.

PUISNE JUDGES:

The Hon'ble SIR JOHN G. WOODROFFE.
" " " ASUTOSH MOOKERJEE, KT., C.S.I.
" " H. HOLMWOOD.
" " C. W. CHITTY.
" " E. E. FLETCHER.
" " S. SHARFUDDIN.
" " H. R. H. COXE (*retired Nov. 14, 1915*).
" " SIR HERBERT W. C. CARNDUFF, KT., C.I.E. (*Deceased*).
" " D. CHATTERJEE.
" " N. R. CHATTERJEA.
" " W. TEUNON.
" " T. W. RICHARDSON.
" " A. CHAUDHURI.
" " S. HASAN IMAM.
" " C. P. BEACHCROFT.
" " H. WALMSLEY.
" " E. P. CHAPMAN (*Additional*).
" " B. K. MULLICK (*Additional*).
" " W. E. CREAVES (*Additional*).
" " B. B. NEWBOULD (*Additional*).
" " F. R. ROE (*Offg.*).

The Hon'ble G. H. B. KENRICK, K.C., *Advocate-General*.
" " B. C. MITTER, *Standing Counsel*.

THE HIGH COURT, BOMBAY, 1915.

CHIEF JUSTICE:

The Hon'ble SIR BASIL SCOTT, KT.

PUISNE JUDGES:

The Hon'ble SIR S. L. BATCHELOR, KT.
" " " DINSHA D. DAVAR, KT.
" " F. C. O. BEAMAN.
" " SIR J. J. HEATON, KT.
" " N. C. MACLEOD.
" " L. A. SHAH.
" " M. H. W. HAYWARD (*Acting*).

The Hon'ble T. J. STRANGMAN (*Advocate-General*) (*Resigned*).
" " M. R. JARDINE (*Advocate-General*).
" " D. N. BAHADURJI (*Acting*).
MR. G. D. FRENCH (*Legal Remembrancer*).

THE HIGH COURT, MADRAS, 1915.

CHIEF JUSTICE:

The Hon'ble SIR JOHN E. P. WALLIS, KT.

PUISNE JUDGES:

The Hon'ble SIR CHITTOOR SANKARAN NAIR, KT., C.I.E.
" " ABDUR RAHIM.
" " SIR WILLIAM B. AYLING, KT.
" " F. DUPRE OLDFIELD.
" " T. SADASIVA AYYAR, *Diwan Bahadur*
" " C. G. SPENCER.
" " V. M. COUTTS TROTTER.
" " T. V. SESHAGIRI AYYAR.
" " F. H. B. TYABJI.
" " W. W. PHILLIPS (*Offg.*).
" " L. G. MOORE (*Offg.*).

TEMPORARY ADDITIONAL JUDGES:

The Hon'ble J. H. BAKEWELL.
" " C. F. NAPIER.
" " C. V. KUMARA SWAMI SASTRIYAR, *Diwan Bahadur.*
" " K. SRINIVASA AYYANGAR

ADVOCATE GENERAL:

The Hon'ble F. H. M. CORBET.

THE HIGH COURT, ALLAHABAD, 1915.

CHIEF JUSTICE:

The Hon'ble SIR HENRY G. RICHARDS, KT., K.C.

PUISNE JUDGES:

The Hon'ble SIR GEORGE E. KNOX, KT.
" " " PRAMADACHARAN BANERJI, KT.
" " W. TUDBALL.
" " E. M. DES C. CHAMIER (*On deputation*).
" " SAIYID MUHAMMAD RAFIQ.
" " T. C. PIGGOTT.
" " C. H. WALSH.

THE PRIVY COUNCIL, 1915.

VISCOUNT HALDANE, *Lord Chancellor.*
LORD BUCKMASTER, *Lord Chancellor.*
EARL OF HALSBURY.
EARL LOREBURN.
LORD DUNEDIN.
LORD ATKINSON.
LORD SHAW OF DUNFERMLINE.
LORD MERSEY.
LORD MOULTON.
LORD PARKER OF WADDINGTON.
LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
SIR GEORGE FARWELL.
SIR ARTHUR CHANNELL.
SIR SAMUEL WAY, BART.
SIR SAMUEL GRIFFITH, G.C.M.G.
SIR EDMUND BARTON, G.C.M.G.
SIR JOHN EDGE.
SIR CHARLES FITZPATRICK, G.C.M.G.
SIR JOSHUA WILLIAMS.
SIR JAMES ROSE-INNES, K.C.M.G.
SYED AMEER ALI, C.I.E.

And those other members of the Privy Council who are within the provisions of the Statutes 3 & 4 Will. IV, c. 41 ; 44 Vict., c. 3, and 50 & 51 Vict., c. 70.

TABLE OF REPORTS DIGESTED.

Reports.	Period.	Number of volumes.	In what Court.	Abbreviations.
Indian Law Reports :—				
Calcutta Series, Vol. 42 .	1915	1	High Court, Calcutta, and Privy Council.	I. L. R. Calc.
Bombay Series, Vol. 39 .	1915	1	High Court, Bombay, and Privy Council.	I. L. R. Bom.
Madras Series, Vol. 38 .	1915	1	High Court, Madras, and Privy Council.	I. L. R. Mad.
Allahabad Series, Vol. 37 .	1915	1	High Court, Allahabad, and Privy Council.	I. L. R. All.
Calcutta Weekly Notes, Vol. 19.	1914-15	1	High Court, Calcutta, and Privy Council.	C. W. N.
Law Reports Indian Appeals, Vol. 42.	1914-15	1	Privy Council	L. R. I. A.
		6		

TABLE

OF

HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES IN THE DIGEST.

1915.

The headings and sub-headings under which the cases are arranged, are printed in this table in capitals, the headings in black type and the sub-headings in small capitals. The cross-references are printed in ordinary type.

Abandonment.
Abatement of Suit.
Abetment.
Abetment of Supply.
Absence.
Absolute Gift.
Acceptance.
Accident.
ACCOUNT.
Accounts.
Accounts and Administration.
Accused.
ACQUIESCENCE.
Acquisition of Land.
ACQUITTAL.
Act.
Adjustment.
Administration Suit.
Administrator General's Act.
Admiralty Court Act (24 Vic., c. 10).
Admiralty Jurisdiction.
Admission in Pleadings.
Admission of Execution.
ADOPTION.
Ad valorem Court-fee.
Adverse Enjoyment.
ADVERSE POSSESSION.
Advertisement.
Agency.
Agent.
AGRA TENANCY ACT, 1901.
Agreement.
Agreement in Restraint of Trade.
Agreement to reconvey.
Agricultural Lands.
Agricultural Tribe.
Agriculturist.
Ahmedabad Taluqdars Act.
Alienation.
Alienee.
Alluvion.
Alteration.
Ambiguity.
Amended Letters Patent.
Amendment.
Ancestral Moveable Property.
Ancestral Property.
Ancient Light.
Annuity.
APPEAL.
APPEAL TO PRIVY COUNCIL.
Appearance.
APPELLATE COURT.
ARBITRATION.
Arbitration Act.
Archaka.

Arms.
Arms Act, 1878.
ARREST OF SHIP.
ASSAM LAND AND REVENUE REGULATION.
Assault.
Assessment.
Assets.
Assignee.
ASSIGNEE OF MONEY-DECREE OF THE ORIGINAL COURT.
Assignment.
Assistant Collector.
Assistant Judge.
Assistant Sessions Judge.
ATTACHMENT.
Attachment of Debt.
ATTESTATION.
Attestation and Ratification.
Auction Purchase.
Auction Sale.
AUTREFOIS ACQUIT.
AWARD.

Babuana Grant.
BAIL.
BAILIFF.
Bairagi.
Bandhu.
Bandsman.
Bank.
Bankruptcy Act (46 & 47 Vic., c. 52).
Barki Service.
Baroda-Court Decree.
Barrister.
BENAMI TRANSACTION.
BENAMIDAR.
Bench of Magistrates.
Bengal Acts.
Bengal Chamber of Commerce.
BENGAL MEDICAL ACT, 1914.
Bengal Municipal Act, 1884.
BENGAL, N.-W. P. AND ASSAM CIVIL COURTS ACT.
BENGAL SURVEY ACT, 1875.
BENGAL TENANCY ACT, 1885.
Bequest.
BHAGDARI AND NARWADARI TENURES ACT.
Bhinna-gotra Sapindas.
BILL OF LADING.
Birth.
Board of Revenue.
Boats or Lighters.
Bombay Acts.
BOMBAY CIVIL COURTS ACT.
BOMBAY CITY LAND REVENUE ACT.
Bombay Land Revenue Code.
BOND.
Bonus.
Bought and sold Notes.
Breach of Contract.
Breach of Trust.
Broker.
Bundelkhand Alienation Act.
Burden of Proof.

CALCUTTA MUNICIPAL ACT.
Cancellation of Order.
Capital Cases.
Care and Prudence.
Cargo.
Caste.
Caste Question.
Cause of Action.
CENTRAL PROVINCES LAND REVENUE ACT.
Certified copy.
CHARGE.
Charter Act (24 & 25 Vic., c. 104).
Charter of the Supreme Court, 1774.
Chattels.
CHAUKIDARI CHAKRAN LANDS.
CHEQUE, PAYMENT BY.
CHOTA NAGPUR ENCUMBERED ESTATES ACT.
CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT.
CHOTA NAGPUR TENANCY ACT.
CHUKANI RIGHT.
CHUR LAND.
Civil and Revenue Courts.
Civil Court.
Civil Courts Act, 1887.
CIVIL PROCEDURE CODES, 1882, 1908.
Civil Rules of Practice.
Claimant.
CO-CLAIMANTS.
Co-conspirators.
Co-operative Societies Act, 1912.

CO-OPERATIVE SOCIETY.
Co-parcener.
Co-sharer.
Cocaine.
Coercion.
Collector.
Collector of Bombay.
Collector's Certificate.
Collusion.
Colonial Courts of Admiralty Act (53 & 54 Vic., c. 27).
Commercial Intercourse with enemies Ordinance (VI of 1914).
Commission.
COMMITMENT.
Common Carriers.
Companies Act, 1882.
COMPANY.
Compensation.
COMPLAINANT.
COMPLAINT.
Composition of Offence.
COMPROMISE.
Computation of time.
Conditional Consent.
Conditional Offer.
Conditional Order.
Confession.
CONFISCATION.
Consent.
Consent of Court.
Consent of Parties.
Consideration.
Consolidated Rate.
Consolidating Statute.
CONSPIRACY.
Construction.
CONSTRUCTION OF DEED.
CONSTRUCTION OF DOCUMENT.
Construction of Lease and Sanad.
Construction of Statutes.
Constructive Notice.
CONTEMPT OF COURT.
Contentious Matter.
Continuous Account.
CONTRACT.
CONTRACT ACT.
Contract of Employment.
Contract of Marriage.
Contract of Sale.
Contracts C.I.F.
Contribution.
Contributories.
Conversion.
Conveyance.
Conviction.
Corporation-Sole.
Corroboration.
COSTS.
Court.
COURT FEE.
COURT FEES ACT.
Court of Wards.
Court Sale.
Credit.
Creditor.
Criminal Breach of Trust.
Criminal Cases.
Criminal Conspiracy.
Criminal Procedure Code.
Cross-examination.
Cross objections.
Crown.
Custody.
Custody of Minor.
CUSTOM.
Custom of Caste.

Damage.
Damages.
DAMDUPAT, RULE OF.
Darbhanga Raj.
DASTURAT.
Daughters.
Death.
DEBT.
Debtor.
Debtor (literate).
Declaration.
DECLARATION AND INJUNCTION, SUIT FOR.
Declaration of London.
Declaration of Paris.
Declaratory Suit.
DECREE.
Decree for Divorce.
DECREE-HOLDER.
Decree-holders (rival).

DECREE NISI.
Decree on Mortgage.
DEED.
DEED, CONSTRUCTION OF.
Deed of Sale.
Default.
DEFENDANT, DEATH OF.
DEKKHAN AGRICULTURISTS' RELIEF ACT.
Delay.
Delhi Laws Act, 1912.
Demands.
Deposit.
Deposition.
Deputy Commissioner.
Deshgat Vatan Lands.
Destination.
Detective.
Director.
Disbelief.
Discovery.
Discretion of Court.
Discretionary Relief.
Dismissal.
Disobedience.
Dispossession.
DISPUTE CONCERNING LAND.
Dissolution of Partnership.
Distraint.
District Deputy Collector.
District Judge.
DISTRICT MUNICIPAL ACT, BOMBAY.
Divesting of Property.
DIVORCE.
DIVORCE ACT.
Doctrine of Protection.
DOCUMENT.
Dower.
Dower-debt.
Drains
Drunkenness.

Earnest Money.
EASEMENT.
EASEMENTS ACT, 1882.
Editor of Newspaper.
EJECTMENT.
Election.
ELECTRICITY ACT, 1910.
Embankment Act (Beng.).
Embankment Charges.
Embarrassment.
Encroachment.
Endorsement.
Endowment.
Enemy Ship.
Engagements.
English Law of Waters.
Enjoyment (adverse).
Epidemic Diseases Act.
Equitable Assignment.
Equities on Partition.
EQUITY OF REDEMPTION.
Estate.
ESTATES LAND ACT (MAD.).
ESTATES PARTITION ACT (BENG.).
Estoppel.
Estoppel by Conduct.
EVIDENCE.
EVIDENCE ACT.
Exchange of Lands.
Excise Inspector.
Exclusion of Females.
Executant.
EXECUTION.
Execution Application.
EXECUTION OF DECREE.
EXECUTION PROCEEDINGS.
Execution Sale.
EXECUTION, STAY OF.
Executor.
Ex parte Decree.
EXPLOSIVE SUBSTANCE.
Explosive Substances Act.
Exportation.
Expropriatary Tenant.
Extradition Act, 1903.
Extradition Warrant.
Extrinsic Evidence.
Ex-trustee.
Eye-witness.

False Complaint.
False and Vexatious Complaint.
Family Settlement.
Father.
FAZENDARI TENURE.

Females.
Finding of Fact.
Fire-arms.
First Charge.
FISHERY.
FISHING LEASE.
Fitness of Surety.
Force.
Foreign-Court Decree.
Foreign Judgment.
FORFEITURE.
FRAUD.
Fraudulent Transfer.

Garden.
Garnishee Order.
General Clauses Act (Bombay)
Gift.
Gift-over.
Goods.
Goodwill.
Government.
Government Officials, Bombay.
Government Orders.
Governor-General in Council.
GRANT.
Grant by Crown.
Grantees.
GUARDIAN.
Guardian ad Litem.
Guardian for Marriage.
Guardians and Wards Act.
Gujarat Taluqdars Act (Bombay).

Handwriting.
Heir.
Hereditary Office.
HEREDITARY OFFICES ACT (BOMBAY).
Heredity.
Heritable Estate.
High Court.
High Court, jurisdiction of.
High Court Manual of Circulars.
High Court Rules (Appellate Side).
High Court Rules (Original Side).
HIGH COURTS ACT (24 & 25 VIC., C. 104).
Hindu Joint Family.
Hindu Law.
HINDU LAW—ADOPTION.
HINDU LAW—ALIENATION.
HINDU LAW—BANDHUS.
HINDU LAW—CUSTOM.
HINDU LAW—DEBT.
HINDU LAW—ENDOWMENT.
HINDU LAW—GUARDIAN.
HINDU LAW—HUSBAND AND WIFE.
HINDU LAW—INHERITANCE.
HINDU LAW—JOINT FAMILY.
HINDU LAW—MAINTENANCE.
HINDU LAW—MARRIAGE.
HINDU LAW—MINOR.
HINDU LAW—MORTGAGE.
HINDU LAW—PARTITION.
HINDU LAW—REVERSIONERS.
HINDU LAW—STRIDHAN.
HINDU LAW—SUCCESSION.
HINDU LAW—SURETY DEBT.
HINDU LAW—WIDOW.
HINDU LAW—WILL.
HINDU LAW—WOMAN'S ESTATE.
Hindu Widow.
Holding.
HOMESTEAD LAND.
Honorary Secretary.
Horoscope.
HORSE.
Hundi.
HUNDI SHAH JOG.
House Search.
Hurt.
Husband and Wife.
Husband's Estate.
Hypothecation.

Identity of Transaction.
Ijmali Share.
Illegal Composition.
Illegitimate Children.
Immoral Custom.
Immoveable Property.
Impartible Estate.
Improvements.
Inadequacy of Price.
Inalienability.
Inam.
Inam Authorities.
Inam Settlement.

Inamdar.
Inamdar and Ryot.
Inamdar and Zamindar.
Incapacity.
INCOME TAX.
Income Tax Act.
Incumbrance.
Incurability.
Indian High Courts Act (24 & 25 Vic., c. 104).
Indian Marine Service.
Infant.
Infringement.
Inheritance.
INJUNCTION.
Injunction and Declaration.
Injury.
INSOLVENCY.
Insolvency Act (11 & 12 Vic., c. 21).
Insolvent.
INSTALMENT BOND.
Instalments.
Instrument.
Intangible Property.
Intent.
Intent and Knowledge.
INTEREST.
INTEREST ACT, 1839.
Interim Receiver.
Interlocutory Order.
International Law.
Irregularity.

JAIGIR.
Jalkar.
Joint Business.
Joint Execution.
Joint-family Business.
Joint-family Property.
JOINT HINDU FAMILY.
Joint Possession.
Joint Property.
Joint Trade.
Joint Trial.
Joint Venture.
Judge.
JUDGMENT.
Judgment-Creditor.
Judgment-Debtor.
Judicial Enquiry.
Judicial Notice.
JURISDICTION.
Jurisdiction of Civil Court.
Jurisdiction of Civil and Revenue Courts.
Jurisdiction of Criminal Court.
Jurisdiction of Magistrates.
Jurisdiction of Revenue Courts.
Jury.
Jury Trials.
Justification.

Kalighat Temple.
KASBATIS.
KHORPOSH GRANT.
Kidnapping.
King's Prerogative of Pardon.
Knowledge.
Knowledge and Intent.
Kudivaram.

Laches.
Lambardar and Co-sharer.
LAND ACQUISITION ACT, 1894.
Land Acquisition Judge.
Landholder.
LANDLORD AND TENANT.
1. ALIENATION.
2. EJECTMENT.
3. ENCROACHMENT.
4. ESTOPPEL.
5. IMPROVEMENTS.
6. INAM LANDS.
7. RENT.
8. TITLE.

LAND REGISTRATION ACT (BENGAL).
LAND REVENUE CODE (BOMBAY).
Leading Questions.
LEASE.
Lease in Perpetuity.
LEAVE TO APPEAL TO PRIVY COUNCIL.
Legacy.
Legal Necessity.
Legal Representative.
Legatee.
Legitimacy.
Leprosy (anœsthetic).
Lessee.
Lessee of Rent.

Lessees from Bombay Government.
Lessor.
LESSOR AND LESSEE.
Letters of Administration.
LETTERS PATENT.
Liability.
License.
Life Estate.
Life Interest.
Light and Air.
Lighters or Boats.
LIMITATION.
LIMITATION ACTS, 1877, 1908.
Limitation Amendment Act.
Limited Company.
Liquidated Damages.
LIS PENDENS.
Local Custom.
Local Government.
Local Government Rules (Madras).
LUNACY ACT, 1858.
Lurking House-trespass.

Madras Acts.
MADRAS ASSESSMENT OF LAND REVENUE ACT.
MADRAS CITY MUNICIPAL ACT.
MADRAS CIVIL COURTS ACT.
MADRAS DISTRICT MUNICIPALITIES ACT.
MADRAS ESTATES LAND ACT.
Madras Forest Act.
Madras Hereditary Village Officers Act.
MADRAS IRRIGATION CESS ACT.
MADRAS LAND ENCROACHMENT ACT.
Madras Local Boards Act.
MADRAS REGULATION (XXV OF 1802).
Madras Rent Recovery Act.
Madras Revenue Recovery Act.
Madras Water-Cess Act.
MAGISTRATES, BENCH OF.
Magistrates, duties of.
Mahant of Temple.
Mahomedan Law.
MAHOMEDAN LAW—DOWER.
MAHOMEDAN LAW—GIFT.
MAHOMEDAN LAW—JOINT BUSINESS.
MAHOMEDAN LAW—MARRIAGE.
MAHOMEDAN LAW—MUTAWALLI.
MAHOMEDAN LAW—PRE-EMPTION.
MAHOMEDAN LAW—WAKF.
Maiden's Property.
Maintenance.
Majority.
Majority Act, 1875.
MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.
MALABAR LAW.
MALABAR TENANTS' IMPROVEMENTS ACT.
Malice.
MALICIOUS PROSECUTION.
MALIKANA.
Malikana Dues.
Mamlatdar.
MAMLATDARS' COURTS ACT (BOMBAY).
Manager.
Mandamus.
MAPPILLAS OF NORTH MALABAR.
Maritime Necessaries.
MARRIAGE.
Marumakkattayam.
MATADARS ACT (BOMBAY).
Mayukha.
Measure of Right.
Melvaram.
Melvaramdar.
Memorandum of Agreement.
MERCHANT SEAMEN ACT, 1859.
Merchant Shipping Act (57 & 58 Vic., c. 60).
Mesne Profits.
MINE.
MINERAL RIGHTS.
MINOR.
Minor Widow.
Minority.
Misappropriation.
Misappropriation of Goods.
MISJOINDER.
MISJOINDER OF CHARGES.
Misrepresentation.
Mistake.
Mitakshara.
Moghali Brahmottar.
MORTGAGE.
1. INTEREST.
2. LOST BOND.
3. MINOR.
4. PRIORITY.

MORTGAGE—*concld.*
5. REDEMPTION.
6. SALE OF MORTGAGED PROPERTY.
7. SUBROGATION.
8. USUFRUCTUARY MORTGAGE.
Mortgage Bond.
Mortgage Debt.
Mortgage Decree.
Mortgage Deed.
Mortgage Suit.
Mortgagee.
Mortgagee in Possession.
Mortgagor and Mortgagee.
Mosque.
Moveable Property.
Municipal Board.
MUNICIPAL COUNCIL.
Municipal Courts.
Municipal Officer.
Municipal Taxes.
Municipality.
Munim.
Munsif.
MUSALMAN WAKF VALIDATING ACT.
Mutawalli.
MUTT, HEAD OF.

Navigable River.
Negligence.
NEGOTIABLE INSTRUMENTS ACT.
Nepal.
New Case.
New Trial.
NON-TRANSFERABLE HOLDING.
North-Western Provinces Acts.
NORTH-WESTERN PROVINCES RENT ACT.
NOTICE.
Notice of Suit.
Notification.
Nuisance.
Nullity of Decree.

OATHS ACT, 1873.
Obstruction.
OCCUPANCY HOLDING.
OCCUPANCY-RAIYAT.
OCCUPANCY RIGHT.
Official Assignee.
Official Receiver.
Official Witness.
Old Waste Grounds.
Onus of Proof.
Oral Agreement.
Oral Sale.
Ordinance (VI of 1914).
Original Court.
ORIGINAL SIDE.
Orissa Zamindari.
Outcaste.
Owner.

PACHETE RAJ.
PAKKI ADAT TRANSACTIONS.
PALAS OR TURNS OF WORSHIP.
Palmyra Juice.
PARDANASHIN.
PARDON.
Parol Acceptance.
Part payment.
PARTIES.
PARTITION.
PARTNERSHIP.
Pasture Land.
Pasture Rent.
Paternal Aunt.
PATNI LEASE.
Patta.
Payment.
Pedigree.
Penal Assessment.
PENAL CODE.
Penalty.
PENSIONS ACT, 1871.
Performance.
PERJURY.
Permanent Lease.
Permanent Settlement.
Perpetuities
Personal Covenant.
Personal Decree.
Petition.
Pial.
Piecemeal Trial.
Pitrai Chela.
Plaint.
Pleader.
PLEADINGS

Pledge.
Police Officer.
Police Report.
POSSESSION.
Possessory Suit.
Post Office.
POST OFFICE ACT, 1898.
POWER-OF-ATTORNEY.
PRACTICE.
PRE-EMPTION.
1. CONTRACT OF.
2. CUSTOM.
3. RIGHT OF PRE-EMPTION.
4. WAJIB-UL-ARZ.
Pre-emptor.
Preferential Heir.
PRELIMINARY DECREE.
Preliminary Inquiry.
Preliminary Mortgage-Decree.
Prescription.
Presidency Magistrates.
Presidency Small Cause Court Rules.
PRESIDENCY SMALL CAUSE COURTS ACT.
PRESIDENCY TOWNS INSOLVENCY ACT.
Press Act, 1910.
Presumption.
Previous Acquittal.
Previous Conviction.
Price.
Primogeniture.
Principal.
PRINCIPAL AND AGENT.
Principal and Surety.
Prior and Puisne Mortgages.
Prior Mortgage.
Priority.
Private Award.
Privity of Contract.
Privy Council.
Privy Council, Appeal to.
PRIVY COUNCIL, PRACTICE OF.
Prize.
PROBATE.
PROBATE AND ADMINISTRATION ACT.
Procedure.
Proceedings.
Promisor.
PROMISSORY NOTE.
Proof in Common Form.
Property.
Proprietary Title.
Prosecution.
Prostitution.
PROVIDENT INSURANCE.
Provident Insurance Societies Act, 1912.
PROVINCIAL INSOLVENCY ACT, 1907.
PROVINCIAL SMALL CAUSE COURTS ACT, 1887.
Proxy.
Public Charity.
PUBLIC DEMANDS RECOVERY ACT (BENGAL).
PUBLIC NUISANCE.
Public Pathway.
Public Policy.
Public Prosecutor.
PUBLIC PROSECUTOR, DUTY OF.
Public Religious Trust.
PUBLIC ROAD.
Public Servant.
Public Trust.
Puisne Mortgagee.
Purchaser.
Purdanashin.
PUTNI.
PUTNI REGULATION (VIII OF 1819).

RAILWAY COMPANY.
RAILWAY RECEIPT.
Railway Rule.
RAILWAYS ACT, 1890.
Rape.
RATEABLE DISTRIBUTION.
RATES AND TAXES.
Ratification.
RECEIPT.
RECEIVER.
Receiver in Insolvency.
Receiver's Report.
Reciprocal Promises.
Record.
Record-of-Right.
Redemption.
Re-entry.
REFERENCE.
Refund.
Register of Birth.

REGISTRATION.
REGISTRATION ACTS, 1877, 1908.
Regulation (I of 1793).
REGULATION (V OF 1886).
Regulation (XI of 1825).
Regulation (XII of 1805).
Regulation (XIII of 1805).
Regulation (XXXVII of 1793).
Release.
Religious Endowment.
RELIGIOUS ENDOWMENTS ACT.
Relinquishment.
REMAND.
Remand Order.
Rent.
Rent Roll.
Rescue from Lawful Custody.
Residuary Clause.
RES JUDICATA.
Restitution.
RESUMPTION.
Resumption by Government.
Revenue Court, Jurisdiction of.
Revenue Jurisdiction Act, 1876.
Revenue Recovery Act (Madras).
REVENUE SALE LAW (ACT XI OF 1859).
Reversioner.
REVIEW OF JUDGMENT.
REVISION.
REVISIONAL AND APPELLATE JURISDICTION.
Revivor of Decree.
Revocation.
Right of Suit.
Right of Way.
Road Cess.
Royalty.
Ruling Chief.
Ryot.
Ryoti Land.
Ryoti Rent.

SALE.
SALE DEED.
SALE FOR ARREARS OF REVENUE
SALE OF GOODS.
Sales in Execution.
Sanad.
Sanction.
SANCTION FOR PROSECUTION.
Sanction to sue.
Sanyasis.
Sapinda Relationship.
Scheduled Districts Act, 1874.
Seaman.
Search Warrant.
Seaworthiness.
SECOND APPEAL.
Secretary of State.
Securities.
Security for good Behaviour.
Security to keep the Peace.
Self Acquisition.
Seller.
Sentence.
Separation.
Service of Summons.
Service Tenure.
Servient Tenement.
Sessions Judge.
Sessions Trial.
SET-OFF.
Setting aside Sale.
Settlement.
Shah Jog Hundi.
Share Capital.
Shareholder.
Shebait.
Ship.
Shipping.
Shrotriemdar.
Simple Interest.
Single Judge.
Slavery Bond.
Small Cause Court.
Sohag Grant.
Son.
Sonthal Parganas.
Sonthal Parganas Act.
Sonthal Parganas Justice Regulation.
SONTHAL PARGANAS REGULATION, 1872.
Sonthal Parganas Settlement Regulation.
Sovereign Prince.
SPECIAL COURT.
Special Tribunal.
Specific Performance.
SPECIFIC RELIEF ACT.

Stamp.
STAMP ACT, 1899.
Standing Committee.
Statute Law in England.
Statutes.
STATUTES, CONSTRUCTION OF.
Stay of Execution.
Stay of Suit.
Step-in-aid of Execution.
Street.
Stridhan.
Sub-divisional Magistrate
Sub-lease.
Subordinate Judge.
Subordinate Officers.
Substitution of Parties.
Succession.
SUCCESSION ACT.
SUCCESSION CERTIFICATE.
SUCCESSION CERTIFICATE ACT.
Suit.
Suit for Land.
Suits' Valuation Act.
SUMMONS.
SUNDERBANS.
SURETY.
Surrender or Abandonment.
Survey Act.

Taxation.
Temple.
Temple Committee.
Temporary Injunction.
Tenancy.
Tenant.
Tenant for a Term.
Tenant in Common.
Tender.
Tenements.
Tenure.
Tenure of Land.
Testator.
THAK AND SURVEY MAPS.
Tidal River.
Timber Trees.
Time.
Title.
Tort.
TRADE-MARK.
TRADING WITH THE ENEMY.
Trading-with-the-Enemy Proclamation.
TRANSFER.
TRANSFER OF PROPERTY ACT.
Transferability.
Trespass.
Trespasser.
Trial.
Trust.
Trust Fund.
TRUSTEE.
Trustees Act, 1882.
Turns of Worship.

Ultra Vires.
Unconscionable Bargain.
UNDER-RAIYAT.
UNDER-RAIYATI HOLDING.
Under-tenure.
Undertaking.
UNDUE INFLUENCE.
United Provinces and Oudh Acts.
UNITED PROVINCES COURT OF WARDS ACT.
Unity of Object.
USUFRUCTUARY MORTGAGE.
Usurious Interest.
Usury.

Valuation.
Valuation of Suit.
VARTHAMANAM OR LETTER.
Vatandar.
Vendee.
VENDOR AND PURCHASER.
Venue.
Vesting Order.
VILLAGE.
Village Chaukidari Act (Bengal).
VRITTI.

Wager.
WAIVER.
Wajib-ul-arz.
Wakf.
WAKF VALIDATING ACT, 1913.
Waqf.
WARRANT.
Waste Lands.
Water.

WATERFLOW.
Widow.
Wife.
WILL.
1. CONSTRUCTION.
2. PROBATE.
3. REVOCATION.
Will of Parsi.
Winding-up.
Withdrawal.
Withdrawal of Suit.
Witness.
Women.
Words and Phrases.
WORKMAN'S BREACH OF CONTRACT ACT.
Worship.
Writ of Possession.
WRITTEN STATEMENT OF ACCUSED.
Wrongful Confinement.
Wrongful Possession.
Wrongful Seizure.
Zamindar.
Zamindar and Inamdar.
Zamindari.
ZURPESHGI LEASE.

TABLE

OF

CASES IN THE DIGEST.

Name of Case.	Volume and Page.	Column of Digest.
A		
Abdul Ali *v.* Rejan Ali	19 C. W. N. 468	173
Abdul Aziz *v.* Tafazuddin Sheikh	19 C. W. N. 326	97
Abdul Gani Chowdhury *v.* Makbul Ali	I. L. R. 42 Calc. 745	338
Abdul Ghaffar *v.* Nur Jahan Begam	I. L. R. 37 All. 434	281
Abdul Gofur Mandal *v.* Umakanta Pandit	19 C. W. N. 260	37
Abdul Hakim *v.* Karam Singh	I. L. R. 37 All. 646	88
Abdul Hakim Chowdhury *v.* Hem Chandra Das	I. L. R. 42 Calc. 433	17
Abdul Haq *v.* Datti Lal	I. L. R. 37 All. 144	452
Abdul Kader Rowther *v.* Krishnan Malaval Nair	I. L. R. 38 Mad. 695	272
Abdul Khadir *v.* Ahammad Shaiwa Ravuthar	I. L. R 38 Mad. 419	77
Abdul Majeed *v.* Khirode Chandra Pal	I. L. R. 42 Calc. 690; 19 C. W. N. 809	241
Abdul Quadir *v.* Shahbazpur Co-operative Bank	I. L. R. 42 Calc. 377	107
Abdul Rafi Khan *v.* Maula Bakhsh	I. L. R. 37 All. 527	181
Abdul Rahman Chowdhuri *v.* Ahmadar Rahman	19 C. W. N. 1217	44
Abdullah Hossein Chowdhury *v.* Administrator-General of Bengal	I. L. R. 42 Calc. 35	261
Abhayeswari Debi *v.* Kishori Mohan Banerjee	I. L. R. 42 Calc. 19	112
Abkan Sahib *v.* Soran Bivi Saiba Ammal	I. L. R. 38 Mad. 260	271
Abul Kalam Azad, *In re*	I. L. R. 42 Calc. 730	187
Achambit Mandal *v.* Mahatab Singh	I. L. R. 42 Calc. 365	112
Adhar Ch. Gope *v.* Pulin Ch. Shaha	19 C. W. N. 1085	73
Adityam Iyer *v.* Rama Krishna Iyer	I. L. R. 38 Mad. 514	175
Afzal Begam *v.* Akbari Khanum	I. L. R. 37 All. 326	98
Afzal Shah *v.* Muhammad Abdul Karim	I. L. R. 37 All. 232	34
Ahid Khondkar *v.* Mahendra Lal De	I. L. R. 42 Calc. 830; 19 C. W. N. 804	410
Ahmad Raza Khan *v.* Ram Lal	I. L. R. 37 All. 203	361
Ahmed Musaji Saleji *v.* Hashim Ebrahim Saleji	I. L. R. 42 Calc. 914; L. R. 42 I. A. 91; 19 C. W. N. 449	18, 83
Ajo Koer *v.* Gorak Nath	19 C. W. N. 517	75
Akbar Ali Khan *v.* Syed Abbas	19 C. W. N. 1328	39
Akbar Ali Mahomed *v.* Emperor	I. L. R. 42 Calc. 706; 19 C. W. N. 220	434
Akhil Chandra Biswas *v.* Hasan Ali Sadagar	19 C. W. N. 246	36, 456
Akhoy Kumar Banerjee *v.* Corporation of Calcutta	I. L. R. 42 Calc. 625; 19 C. W. N. 37	395

Name of Case.	Volume and Page.	Column of Digest.
Akhoy Kumar Chatterjee *v.* Akman Molla	19 C. W. N. 1197	45
Alamelammall *v.* Suryaprakasaroya Mudaliar	I. L. R. 38 Mad. 988	431
Ali Haffiz *v.* Abdur Rahaman	I. L. R. 42 Calc. 1135	347
Allahabad Trading and Banking Corporation, Limited *v.* Ghulam Muhammad	I. L. R. 37 All. 383	377
Alwar Chetty *v.* Chidambara Mudali	I. L. R. 38 Mad. 1134	7
Amatoo *v.* Muksud Ali	19 C. W. N. 435	452
Ambika Prasad Singh *v.* Perdip Singh	I. L. R. 42 Calc. 451 ; 19 C. W. N. 233	126
Ambujammal *v.* Appadurai Mudali	I. L. R. 38 Mad. 414	103
Amina Bibi *v.* Najm-un-nissa	I. L. R. 37 All. 233	281
Aminnessa *v.* Jinnat Ali	I. L. R. 42 Calc. 751 ; 19 C. W. N. 43	456
Amirbibi *v.* Azizabibi	I. L. R. 39 Bom. 563	332
Amjadennessa Bibi *v.* Rahim Buksh Shikdar	I. L. R. 42 Calc. 286 ; 19 C. W. N. 383	457
Amrita Lal Hazra *v.* Emperor	I. L. R. 42 Calc. 957 ; 19 C. W. N. 676	58, 116, 147, 183, 472
Amrita Sundari Debi *v.* Serajuddin Ahmed	19 C. W. N. 565	64
Amulya Ratan Sircar *v.* Tarini Nath Dey	I. L. R. 42 Calc. 254	337
Angammal *v.* Aslami Sahib	I. L. R. 38 Mad. 710	256
Angnu Ghasi *v.* Chuthu Patras	19 C. W. N. 461	62
Annamalai *v.* Murugappa	I. L. R. 38 Mad. 837	278
Annapurna Dasee *v.* Nalini Mohan Das	I. L. R. 42 Calc. 10	432
Annasami Sastrial *v.* Ramasami Sastrial	I. L. R. 38 Mad. 553	381
Anupa Kunwar, *v.* Achhaibar Singh	I. L. R. 37 All. 97	181
Appalanarasimhulu *v.* Sanyasi	I. L. R. 38 Mad. 33	295
Arunachala *v.* Ramasami	I. L. R. 38 Mad. 1171	414
Arunachalam Chetty *v.* Rangasawmy Pillai	I. L. R. 38 Mad. 922	151
Ashraf Ali *v.* Emperor	I. L. R. 42 Calc. 25	29
Ashraf Ali *v.* Kalyan Das	I. L. R. 37 All. 585	458
Ashutosh Singha *v.* Bonomali Sain	19 C. W. N. 412	44
Asrabuddin Sarkar *v.* Kalidayal Mullik	19 C. W. N. 125	137
Assistant Sessions Judge, The, North Arcot *v.* Ramaswami Asari	I. L. R. 38 Mad. 779	134
Atchaparaju *v.* Rajah V. G. Krishnayachendrula Varu	I. L. R. 38 Mad. 163	297
Atiman Bibi *v.* Sheikh Reasut	19 C. W. N. 1117	423
Ayatannessa Bibi *v.* Kulfu Khalifa	19 C. W. N. 234	81

B

Badan *v.* Murari Lal	I. L. R. 37 All. 309	327
Badrannessa Chaudhrani *v.* Alam Gazi	19 C. W. N. 814	338
Bagga *v.* Saleh	19 C. W. N. 1023	460
Baijnath Goenka *v.* Baijnath Singh	19 C. W. N. 464	409
Baisnab Ch. Saha *v.* Bank of Bengal	19 C. W. N. 1008	74
Bal Gangadhar Tilak *v.* Shrinivas Pandit	I. L. R. 39 Bom. 441 ; L. R. 42 I. A. 135 ; 19 C. W. N. 729	177, 189, 201, 227, 457

Name of Case.	Volume and Page.	Column of Digest.
Balaram Vithalchand *v.* Maruti	I. L. R. 39 Bom. 256	77
Balasubramania Chetti *v.* Swarnammal	I. L. R. 38 Mad. 199	179
Balchand Surana, *In re*	19 C. W. N. 433	239
Baldeo Prasad *v.* The Collector of Pilibhit	I. L. R. 37 All. 13	458
Baldeo Sahai *v.* Behari Lal	I. L. R. 37 All. 99	375
Balmer Lawrie & Co. *v.* Jadunath Banerjee	I. L. R. 42 Calc. 1 ; 19 C. W. N. 1202	394
Balmukund *v.* King-Emperor	I. L. R. 42 Calc. 739 ; L. R. 42 I. A. 133 ; 19 C. W. N. 674	370
Bama Charan Gorai *v.* Ram Kanai Dubey	19 C. W. N. 858	339
Bande Ali Fakir *v.* Amud Sarkar	19 C. W. N. 415	380
Bansidhar *v.* Kharagjit	I. L. R. 37 All. 65	376
Banwari Lal *v.* Khubi Ram	I. L. R. 37 All. 59	12
Baru Mal *v.* Tansukh Rai	I. L. R. 37 All. 524	364
Basangavda *v.* Basangavda	I. L. R. 39 Bom. 87	220
Basanta Kumar Bose *v.* Khulna Loan Co.	19 C. W. N. 1001	389
Basaweswaraswami *v.* The Bellary Municipal Council	I. L. R. 38 Mad. 6	331
Basdeo *v.* Ulfat Rai	I. L. R. 37 All. 22	9
Baser Sheikh *v.* Fazel Karim Biswas	19 C. W. N. 290	336
Basir Ali *v.* Hafez Nazir Ali	19 C. W. N. 817	396
Bata Mondal *v.* Manindra Ch. Nandy	19 C. W. N. 321	36, 41
Batcha Sahib *v.* Abdul Gunny	I. L. R. 38 Mad. 256	29
Batli Reddi, *Re*	I. L. R. 38 Mad. 302	141
Battie *v.* Brown	I. L. R. 38 Mad. 452	162
Behary Lal Nandi *v.* Kedar Nath Nebu	19 C. W. N. 872	186
Beni Singh *v.* Berhamdeo Singh	19 C. W. N. 473	102
Besant *v.* Narayaniah	I. L. R. 38 Mad. 807	195
Bhagwan Dayal *v.* Param Sukh	I. L. R. 37 All. 179	92
Bhagwat Bhaskar *v.* Nivratti Sakharam	I. L. R. 39 Bom. 113	206
Bhairo Prosad *v.* Gojadhar Prosad Sahu	19 C. W. N. 170	275, 360
Bharma bin Shidappa *v.* Bhamagavda	I. L. R. 39 Bom. 421	82, 366
Bhaskaradu *v.* Subbarayudu	I. L. R. 38 Mad. 674	301
Bhuban Mohini Dasi *v.* Gajalakshmi Debi	19 C. W. N. 1330	345
Bijraj Nopani *v.* Pura Sundary Dasee	I. L. R. 42 Calc. 56	460
Bilas Kunwar *v.* Desraj Ranjit Singh	I. L. R. 37 All. 557 ; L. R. 42 I. A. 202 ; 19 C. W. N. 1207	31, 162, 255
Binda Prasad *v.* Raghubir Saran	I. L. R. 37 All. 440	105
Bisheshar Das *v.* Ambika Prasad	I. L. R. 37 All. 575	80
Bishun Pershad Narain Singh *v.* Phulman Singh	19 C. W. N. 935	312
Biswambhar Shaha *v.* Ram Sundar Kaibarta	I. L. R. 42 Calc. 294	267
Biswanath Gorain *v.* Surendra Mohan Ghosh	19 C. W. N. 102	61, 103, 123, 251, 282
Biswa Nath Sinha *v.* Bidhumukhi Dasi	19 C. W. N. 1290	253
Bitari Ram *v.* Kanji Singh	19 C. W. N. 237	277
Bodi *v.* Venkataswami Naidu	I. L. R. 38 Mad. 369	226
Bombay Cotton Manufacturing Company *v.* Motilal Shivlal	I. L. R. 39 Bom. 386 ; L. R. 42 I. A. 110 ; 19 C. W. N. 617	21
Bombay Gas Company, Ld., and Bombay Electric Supply and Tramways Company, Ld., *In the matter of*	I. L. R. 39 Bom. 124	168
Brajendra Lal Das *v.* Lakhmi Narain Khanna	19 C. W. N. 961	86

Name of Case.	Volume and Page.	Column of Digest.
Brij Kumar Lal *v.* Sheo Kumar Misra	I. L. R. 37 All. 444	335
Brijnandan Singh *v.* Bidya Prasad Singh	I. L. R. 42 Calc. 1068 ; 19 C. W. N. 849	217
Buddha Singh *v.* Laltu Singh	I. L. R. 37 All. 604 ; L. R. 42 I. A. 208	210
Buddhu *v.* Diwan	I. L. R. 37 All. 267	273
Byomkesh Chakrabarty *v.* Haladhar Mandal	19 C. W. N. 1271	46
C		
Cassim Mamooji *v.* K. B. Dutt	19 C. W. N. 45	290, 397
Chaitram Rambilas *v.* Bridhichand Kesrichand	I. L. R. 42 Calc. 1140 ; 19 C. W. N. 820	21, 340
Chamed Sheikh *v.* Naba Gopal Ghosh	19 C. W. N. 359	43
Chandi Prasanno Sen *v.* Gour Chandra Dey	19 C. W. N. 1307	335
Chandrabati *v.* Madho Prosad	19 C. W. N. 178	86
Chanmalswami *v.* Gangadharappa	I. L. R. 39 Bom. 339	82
Chattradhari Mian *v.* King-Emperor	19 C. W. N. 557	139
Charu Chandra Ghosh *v.* Chandi Charan Roy	19 C. W. N. 25	97
Cheta Bahira Saheba *v.* Purna Ch. Choudhuri	19 C. W. N. 1272	341
Chhabile Ram *v.* Durga Prasad	I. L. R. 37 All. 296	80
Chhogmal Balkissondas *v.* Jainarayan Kanaiyalal	I. L. R. 39 Bom. 1	342
Chidambara Chettiar *v.* Vaidilinga Padayachi	I. L. R. 38 Mad. 519	453
Chidambaram *v.* Nagappa	I. L. R. 38 Mad. 15	376
Chidambaram Pillai *v.* Muthammal	I. L. R. 38 Mad. 1042	170
China Venkadu, *Re*	I. L. R. 38 Mad. 550	337
Chinnathambiar *v.* Michael	I. L. R. 38 Mad. 629	299
Chinnayya *v.* Ramanna	I. L. R. 38 Mad. 203	189
Chintamoni Jena *v.* Jagannath Ramanuja Das	19 C. W. N. 123	133
Christian *v.* Narbada Koeri	19 C. W. N. 796	191, 451
Chuah Hooi Gnoh Neoh *v.* Khaw Sim Bee	19 C. W. N. 787	172, 320
Chullan Singh *v.* Madho Singh	19 C. W. N. 794	2 59
Co-operative Hindusthan Bank *v.* Bhola Nath Borooah	19 C. W. N. 165	23
Corporation of Calcutta *v.* Monmotha Nath Sett	19 C. W. N. 391	52
D		
D. N. Ghose & Bros. *v.* Popat Narain Bros.	I. L. R. 42 Calc. 819 ; 19 C. W. N. 609	363
Dakhyani Dassi *v.* Mono Raut	19 C. W. N. 407	40
Dalpatsingji *v.* Raisingji	I. L. R. 39 Bom. 528	201
Dambar Singh *v.* Munwar Ali Khan	I. L. R. 37 All. 531	181
Damoda Coal Co. *v.* Hurmook Marwari	19 C. W. N. 1019	451
Damodar Das *v.* Birj Lal	I. L. R. 37 All. 567	104
Damodar Misra *v.* Hrishi Naik	19 C. W. N. 118	92
Damodar Moholal Ginning and Manufacturing Company, Ld. *v.* Nagindas Maganlal	I. L. R. 39 Bom. 383	126

Name of Case.	Volume and Page.	Column of Digest.
Dattajirao Ghorpade *v.* Nilkantrao	I. L. R. 39 Bom. 352	358
Daud Ali *v.* Ram Prasad	I. L. R. 37 All. 542	65
Dayabhai Raghunathdas *v.* Bai Parvati	I. L. R. 39 Bom. 438	195
Daya Khusal *v.* Bai Bhikhi	I. L. R. 39 Bom. 478	315
Dayamayi *v.* Ananda Mohan Roy Chowdhury	I. L. R. 42 Calc. 172	339
Daya Shankar *v.* Hub Lal	I. L. R. 37 All. 105	398
Debnath Das Bairagi *v.* Ram Sundar Barman	19 C. W. N. 1205	422
Deo Narain Singh *v.* Ganga Singh	I. L. R. 37 All. 162	214
Deputy Legal Remembrancer *v.* Kailash Chandra Ghosh	I. L. R. 42 Calc. 760; 19 C. W. N. 181	321
Deputy Legal Remembrancer *v.* Ram Udar Singh	19 C. W. N. 447	136
Deputy Legal Remembrancer *v.* Sital Chandra Pal	I. L. R. 42 Calc. 300	376
Dharam Singh *v.* Joti Prasad	I. L. R. 37 All. 355	138
Dhiraj Chandra Bose *v.* Hari Dasi Debi	I. L. R. 42 Calc. 765; L. R. 42 I. A. 58; 19 C. W. N. 507	415
Dhondo Ramchandra *v.* Bhikaji	I. L. R. 39 Bom. 138	71
Digambar Singh *v.* Ahmad Sayed Khan	I. L. R. 37 All. 129; L. R. 42 I. A. 10; 19 C. W. N. 393	365
Dinabandhu Jana *v.* Chintamoni Jana	19 C. W. N. 476	23
Dino Nath Das *v.* Jogendra Nath Bhoumik	19 C. W. N. 1167	85
Doraisami Serumadan *v.* Nondisami Saluvan	I. L. R. 38 Mad. 118	269
Doyamoyee Choudhurani *v.* Narendra Kishore Roy	19 C. W. N. 79	409
Drigpal Singh *v.* Kallu	I. L. R. 37 All. 660	285
Dumi Chand *v.* Arja Nand	I. L. R. 37 All. 272	103
Durga Mohan Gangopadhya *v.* Sukumar Das	19 C. W. N. 825	37
Durga Pershad *v.* Raghunandan Lal	19 C. W. N. 439	225
Durga Prasad Singh *v.* Hari Ram Mahato	19 C. W. N. 578	62, 339
Durgi Nikarini *v.* Gobordhan Bose	19 C. W. N. 525	441
Dwarka Singh *v.* King-Emperor	19 C. W. N. 121	140
Dwarkanath Das *v.* Monmohan Tafadar	19 C. W. N. 1269	277
Dwijendra Nath Sarma *v.* Goloke Nath Sarma	19 C. W. N. 747	468

E

East Indian Railway Company *v.* Changai Khan	I. L. R. 42 Calc. 888; 19 C. W. N. 1034	403
East Indian Railway Company *v.* N. K. Roy	I. L. R. 37 All. 463	393
East Indian Railway Company *v.* Nilkanth Ray	19 C. W. N. 95	389
Ekradeshwar Singh *v.* Janeshwari Bahuasin	I. L. R. 42 Calc. 582	206
Emperor *v.* Abdur Razzak	I. L. R. 37 All. 286	135
Emperor *v.* Babar Ali Gazi	I. L. R. 42 Calc. 789; 19 C. W. N. 584	398
Emperor *v.* Bateshar	I. L. R. 37 All. 628	137
Emperor *v.* Bhajan Tewari	I. L. R. 37 All. 334	78
Emperor *v.* Bishan Prasad	I. L. R. 37 All. 128	354
Emperor *v.* Brijnandan Prasad	I. L. R. 37 All. 33	130
Emperor *v.* Dip Narain	I. L. R. 37 All. 247	173
Emperor *v.* Ewaz Ali	I. L. R. 37 All. 624	356

Name of Case.	Volume and Page.	Column of Digest.
Emperor *v.* Gangua	I. L. R. 37 All. 331	144
Emperor *v.* Ghasite	I. L. R. 37 All. 31	146
Emperor *v.* Goodhew	I. L. R. 39 Bom. 558	316
Emperor *v.* Govind Sahai	I. L. R. 37 All. 20	131
Emperor *v.* Gulam Hyder Punjabi	I. L. R. 39 Bom. 523	356
Emperor *v.* Hanmaraddi	I. L. R. 39 Bom. 58	134
Emperor *v.* Har Dayal	I. L. R. 37 All. 471	145
Emperor *v.* Ismail Ali Bhai	I. L. R. 39 Bom. 326	363
Emperor *v.* Ismail Khan	I. L. R. 37 All. 289	362
Emperor *v.* Jiwan	I. L. R. 37 All. 107	145
Emperor *v.* Jogendra Nath Ghose	I. L. R. 42 Calc. 240	359
Emperor *v.* Mukhtar Ahmad	I. L. R. 37 All. 353	355
Emperor *v.* Mul Chand	I. L. R. 37 All. 30	130
Emperor *v.* Mulla	I. L. R. 37 All. 395	357
Emperor *v.* Narayan Ganpaya	I. L. R. 39 Bom. 310	135
Emperor *v.* Paras Ram Dube	I. L. R. 37 All. 187	353
Emperor *v.* Raffi Raut	19 C. W. N. 127	147
Emperor *v.* Rahmat	I. L. R. 37 All. 419	144
Emperor *v.* Raja Singh	I. L. R. 37 All. 230	130
Emperor *v.* Ram Chandra	I. L. R. 37 All. 127	144
Emperor *v.* Sabar Akunji	I. L. R. 42 Calc. 756; 19 C. W. N. 179	345
Emperor *v.* Surath	I. L. R. 42 Calc. 608; 19 C. W. N. 335	108
Emperor *v.* Tilak Pandey	I. L. R. 37 All. 344	146
Emperor *v.* Zahir Singh	I. L. R. 37 All. 283	137
Emperor of India *v.* Nagendra Nath Sen Gupta	19 C. W. N. 923	144
Esahaq Chowdhury *v.* Abedunnessa Bibi	I. L. R. 42 Calc. 361; 19 C. W. N. 325	304

F

Fakeerappa *v.* Thippanna	I. L. R. 38 Mad. 664	392
Farzand Ali *v.* Hakim Ali	I. L. R. 37 All. 26	132
Faujdar Thakur *v.* Kasi Chowdhury	I. L. R. 42 Calc. 612; 19 C. W. N. 184	4
Fazulbhoy Jaffer *v.* The Credit Bank of India, Ltd.	I. L. R. 39 Bom. 331	110
Forbes *v.* Secretary of State for India	I. L. R. 42 Calc. 151; 19 C. W. N. 138	235

G

Gajanan Balkrishna *v.* Kashinath Narayan	I. L. R. 39 Bom. 410	200
Ganda Singh *v.* Chuni Lal Shaha	19 C. W. N. 916	232
Ganesh *v.* Babu Ram	I. L. R. 37 All. 72	58
Ganesh Bhagat *v.* Sarada Prasad Mukerjee	I. L. R. 42 Calc. 370; 19 C. W. N. 895	127
Ganesh Narain Sahi *v.* Udai Nath Sahi	19 C. W. N. 998	63

Name of Case.	Volume and Page.	Column of Digest.
Gangaram Agarwalla *v.* Lachiram Kishen Dayal	19 C. W. N. 611	163, 172
Gangaram Narayandas Teli, *In re*	I. L. R. 39 Bom. 434	428
Ganga Reddy *v.* Samarapatty Mudaly	I. L. R. 38 Mad. 512	137
Ganga Sahai *v.* Kesri	I. L. R. 37 All. 545; L. R. 42 I. A. 177; 19 C. W. N. 1175	65, 213
Ganges Sugar Works, Ld. *v.* Nuri Miah	I. L. R. 37 All. 273	109
Garden Reach Spinning and Manufacturing Co. *v.* Secretary of State for India	I. L. R. 42 Calc. 675; 19 C. W. N. 401	16
Gaya Din *v.* Jhumman Lal	I. L. R. 37 All. 400	285
Girish Chandra Ray *v.* Sarat Chandra Singh	I. L. R. 42 Calc. 667	417
Gobinda Chandra Shaha *v.* Dwarka Nath Patita	19 C. W. N. 489	336, 450
Gomez *v.* Idoo Mian	19 C. W. N. 1148	178
Gopini Debi *v.* Ram Taran Tewari	19 C. W. N. 140	254
Govinda Chetti *v.* Peremal Chetti	I. L. R. 38 Mad. 489	132
Govindan Nair *v.* Cheral	I. L. R. 38 Mad. 464	242
Govindappa *v.* Hanumanthappa	I. L. R. 38 Mad. 36	126
Graham *v.* Phanindra Nath Mitra	19 C. W. N. 1038	34, 174
Grand Trunk Ry. Co. *v.* Albert Nelson Robinson	19 C. W. N. 905	392
Grant *v.* Har Sahay Singh	19 C. W. N. 117	38
Gulli Sahu *v.* Emperor	I. L. R. 42 Calc. 793; 19 C. W. N. 221	411
Gur Bakhsh Singh *v.* Kashi Ram	I. L. R. 37 All. 110	147
Gurai Kar *v.* Kuarmoni Singha	19 C. W. N. 1188	105, 148
Gurbuksh Proshad Tewari *v.* Kali Prosad Narain	19 C. W. N. 1322	170
Guru Ch. Saha *v.* Surendra Krista Ray	19 C. W. N. 263	276

H

Habiram Das *v.* Hem Nath Sarma	19 C. W. N. 1068	25, 175
Hamabai Framjee Petit *v.* Secretary of State for India	I. L. R. 39 Bom. 279; L. R. 42 I. A. 44; 19 C. W. N. 305	407
Hankar Ray *v.* Kamta Proshad Sahu	19 C. W. N. 947	70
Hannah *v.* Juggernath & Co.	I. L. R. 42 Calc. 262; 19 C. W. N. 1	438
Harchand Panaji *v.* Gulabchand Kanji	I. L. R. 39 Bom. 34	153
Har Prasad *v.* Sukhdevi Kunwar	I. L. R. 37 All. 241	224
Har Prosad Das *v.* Harihar Prosad Singh	19 C. W. N. 860	276
Haradhone Debnath *v.* Bhagabati Dasi	19 C. W. N. 89	424
Harai Saha *v.* Faizlur Rahaman	19 C. W. N. 1125	79
Hari Das Samanta *v.* Abdul Motleb Mullik	19 C. W. N. 959	133
Hari Kishen Bhagat *v.* Kashi Pershad Singh	I. L. R. 42 Calc. 876; L. R. 42 I. A. 64; 19 C. W. N. 370	203
Hari Krishna *v.* Emperor	I. L. R. 42 Calc. 784; 19 C. W. N. 330	172
Hari Mohan Pal *v.* Atul Krishna Bose	19 C. W. N. 1127	36
Hari Nama Das *v.* Sheikh Naju	19 C. W. N. 120	423
Harsha Nath Chatterjee *v.* Emperor	I. L. R. 42 Calc. 1153; 19 C. W. N. 706	322
Hem Chandra Chaudhuri *v.* Atul Chandra Chakrabarty	19 C. W. N. 386	150
Hem Chandra Choudhury *v.* Hemanta Kumari Debi	19 C. W. N. 356	348

Name of Case.	Volume and Page.	Column of Digest.
Hemanta Kumar Roy *v.* Baranagore Jute Factory Co.	19 C. W. N. 442	237
Hemanta Kumari Debi *v.* Midnapur Zemindari Co.	19 C. W. N. 347	400
Hira Koer *v.* Lachman Gope	19 C. W. N. 1141	41
Hira Lal Ray *v.* Lokenath Saha	19 C. W. N. 864	166
Hirji Khetsey & Co. *v.* B., B. & C. I. Railway Co.	I. L. R. 39 Bom. 191	390
Hurchand Ray *v.* Bengal Nagpur Ry. Co.	19 C. W. N. 64	89
I		
Indar Chand *v.* Emperor	I. L. R. 42 Calc. 1094; 19 C. W. N. 1239	439
Indar Pal *v.* The Imperial Bank	I. L. R. 37 All. 214	214
Indraj *v.* Brother Clement, Missionary	I. L. R. 37 All. 262	364
Indubala Dasi *v.* Panchumani Dasi	19 C. W. N. 1169	228
Intu Meah Mistry *v.* Darbuksh Bhuiyan	I. L. R. 42 Calc. 67	434
Iswaram Pillai *v.* Sonnivaveru Taragan	I. L. R. 38 Mad. 753	120
J		
Jagannath Gir *v.* Tirguna Nand	I. L. R. 37 All. 185	425
Jagdeep Narain Singh *v.* Jaibasi Koer	19 C. W. N. 1191	220
Jahangir *v.* Sheoraj Singh	I. L. R. 37 All. 600	174
Jalandhar Thakur *v.* Jharula Das	I. L. R. 42 Calc. 244	267
Jambu Prasad *v.* Muhammad Aftab Ali Khan	I. L. R. 37 All. 49; L. R. 42 I. A. 22; 19 C. W. N. 282	400
Janab Ali Mia *v.* Nazamuddin Pradhania	19 C. W. N. 897	307
Janaki Nath Hore *v.* Prabhasini Dasi	19 C. W. N. 1077	44, 106, 254, 456
Janki Kuar *v.* Lachmi Narain	I. L. R. 37 All. 535	188
Januki Pershad Jha *v.* Babu Lal Jha	19 C. W. N. 499	421
Jatindra Mohan Rai Chaudhuri *v.* Brojendra Kumar Dutta	19 C. W. N. 553	275
Javerbhai Jorabhai *v.* Gordhan Narsi	I. L. R. 39 Bom. 358	47
Jawahir *v.* Neki Ram	I. L. R. 37 All. 189	72
Jehangir Dadabhoy *v.* Kaikhusru Kavasha	I. L. R. 39 Bom. 296; L. R. 42 I. A. 71; 19 C. W. N. 426	465
Jhandu *v.* Tarif	I. L. R. 37 All. 45; 19 C. W. N. 197	222
Jhandu Mal *v.* Karan Singh	I. L. R. 37 All. 426	325
Jia Bibi *v.* Ilahi Bakhsh	I. L. R. 37 All. 597	286
Jibananda Chakrabarty *v.* Kalidas Malik	I. L. R. 42 Calc. 164	164
Jogendra Nath Goswami *v.* Chandra Kumar Mojumdar	I. L. R. 42 Calc. 28	63
Jogendra Nath Sarkar *v.* Probhat Nath Chatterjee	19 C. W. N. 650	94
Joharmal Ladhooram *v.* Chetram Harising	I. L. R. 39 Bom. 715	215
John Howe *v.* Charlotte Howe	I. L. R. 38 Mad. 466	162
Juggi Lal *v.* Kishan Lal	I. L. R. 37 All. 292	280
Jung Rai *v.* King-Emperor	19 C. W. N. 217	134

Name of Case.	Volume and Page.	Column of Digest.
K		
Kailash Chandra Nath *v.* Sheikh Chhenu	I. L. R. 42 Calc. 546	396
Kalahasti, Raja of *v.* Maharaja of Venkatagiri	I. L. R. 38 Mad. 387	95
Kali Krishna Biswas *v.* Ram Chandra Baidya	19 C. W. N. 823	42
Kalikanund Mukerjee *v.* Biprodas Pal Choudhury	19 C. W. N. 18	387
Kalyan Singh *v.* Jagan Prasad	I. L. R. 37 All. 589	405
Kamakshamma, *In re*	I. L. R. 38 Mad. 498	245
Kamala *v.* Bhagirathi	I. L. R. 38 Mad. 45	221
Kameswaramma *v.* Venkata Subba Row	I. L. R. 38 Mad. 1120	222
Kampta Prasad *v.* Indomati	I. L. R. 37 All. 414	449
Kamini Debi *v.* Promotha Nath Mukerjee	19 C. W. N. 755	67
Kanai Lal Jalan *v.* Rasik Lal Sadhukhan	19 C. W. N. 361	32, 68, 451
Kanaran *v.* Chirutha	I. L. R. 38 Mad. 954	311
Kanchan Mallik *v.* Emperor	I. L. R. 42 Calc. 374	17
Kanhai Ram *v.* Durga Prasad	I. L. R. 37 All. 223	11
Karmali Abdulla *v.* Karimji Jiwanji	I. L. R. 39 Bom. 261; L. R. 42 I. A. 48; 19 C. W. N. 337	349
Karuthan Ambalan, *Re*	I. L. R. 38 Mad. 1088	130
Kashi Nath *v.* Kanhaiya Lal Sharma	I. L. R. 37 All. 452	378
Kashinath Parsharam *v.* Gouravabai	I. L. R. 39 Bom. 245	244, 370
Kashi Ram *v.* Het Singh	I. L. R. 37 All. 101	448
Kathir *v.* Maremadissa	I. L. R. 38 Mad. 450	444
Katum Sahiba *v.* Hajee Badsha Sahib	I. L. R. 38 Mad. 221	395
Katyayani Debi *v.* Port Canning and Land Improvement Co.	19 C. W. N. 56	260, 369, 400
Kauleshar Prasad Misra *v.* Abadi Bibi	I. L. R. 37 All. 631	445
Kayarohana Pathan *v.* Subbaraya Thevan	I. L. R. 38 Mad. 250	209
Kedar *v.* Deo Narain	I. L. R. 37 All. 656	11
Kedar Nath Banerjee *v.* Haridas Ghosh	19 C. W. N. 1181	220
Kedar Nath Mitra *v.* Dinabandhu Saha	I. L. R. 42 Calc. 1043; 19 C. W. N. 724	2, 61
Kesar Kunwar *v.* Kashi Ram	I. L. R. 37 All. 634	329
Keshab Ch. Pramanik *v.* Ajahar Ali Biswas	19 C. W. N. 1182	78
Keshari Chand Surana *v.* Asharam Mahto	19 C. W. N. 1326	425
Keshav Hargovan *v.* Bai Gandi	I. L. R. 39 Bom. 538	215
Khagaram Das *v.* Ram Sankar Das Pramanik	I. L. R. 42 Calc. 652; 19 C. W. N. 775	127, 242
Khagendra Nath Chaudhuri *v.* King-Emperor	19 C. W. N. 706; I. L. R. 42 Calc. 1153	354
Khatjia *v.* Shekh Adam Husenally	I. L. R. 39 Bom. 545	128
Khayali Ram *v.* Kali Charan	I. L. R. 37 All. 573	366
Khemesh Chandra Rakshit *v.* Abdul Hamid Sikdar	19 C. W. N. 782	407
Kheshtra Pal Sharma *v.* Pancham Singh Varma	I. L. R. 37 All. 446	438
Khettramani Dasi *v.* Jiban Krishna Kundu	19 C. W. N. 546	45, 434
Khimji Vassonji *v.* Narsi Dhanji	I. L. R. 39 Bom. 682	315
Khushhali Ram *v.* Bholar Mal	I. L. R. 37 All. 252	378
King-Emperor *v.* Dwijendra Ch. Mukherjee	19 C. W. N. 1043	353
King-Emperor *v.* Durga Halwai	19 C. W. N. 1022	131
King-Emperor *v.* Mohar Ali Sheikh	19 C. W. N. 556	355
King-Emperor *v.* Upendra Nath Das	19 C. W. N. 653	143

Name of Case.	Volume and Page.	Column of Digest.
Kista Bar *v.* Banamoyi Debia	19 C. W. N. 470	101
Kista Bar *v.* Banamoyi Debia	19 C. W. N. 649	448
Kochu Babia *v.* Abdurahman	I. L. R. 38 Mad. 589	310
Kolathu Ayyar *v.* Ranga Vadhyar	I. L. R. 38 Mad. 114	364
Konda *v.* Ramasami	I. L. R. 38 Mad. 1	166
Koneti Naicker *v.* Gopala Ayyar	I. L. R. 38 Mad. 482	334
Korapalu *v.* Narayana	I. L. R. 38 Mad. 445	263
Krishna Bhoopathi Deo *v.* Raja of Vizianagaram	I. L. R. 38 Mad. 832	104
Krishna Dyal Gir *v.* Amirul Hassan	19 C. W. N. 942	70
Krishna Kanta Ghosh *v.* Jadu Kasya	19 C. W. N. 914	45
Krishna Lal Choudhuri *v.* Salim Mahamed Chaudhuri	19 C. W. N. 514	46
Krishnamachariar *v.* Krishnamachariar	I. L. R. 38 Mad. 166	216
Krishnammal *v.* Soundararaja Aiyar	I. L. R. 38 Mad. 698	88
Krishnan *v.* Damodaran	I. L. R. 38 Mad. 48	310
Krishnappa Chetty *v.* Abdul Khader Sahib	I. L. R. 38 Mad. 535	95
Kshirode Sundari Dasi *v.* Nabin Ch. Saha	19 C. W. N. 1231	91
Kuarmoni Singha *v.* Wasif Ali Meerza	19 C. W. N. 1193	93, 274
Kulada Prosad Deghoria *v.* Kali Das Naik	I. L. R. 42 Calc. 536; 19 C. W. N. 542	208
Kumar Krishna Mitter *v.* Amulya Ch. Mitter	19 C. W. N. 345	79
Kumber *v.* The British India Steam Navigation Co., Ld.	I. L. R. 38 Mad. 941	48
Kumeda Prosunna Bhuiya *v.* Secretary of State for India	19 C. W. N. 1017	41
Kundan Lal *v.* Jagannath	I. L. R. 37 All. 649	122
Kunhambi *v.* Kalanthar	I. L. R. 38 Mad. 1052	314
Kunhi Sou *v.* Mulloli Chathu	I. L. R. 38 Mad. 86	262
Kunhu Kutti Ammah *v.* Mallapratu	I. L. R. 38 Mad. 527	311
Kunja Behari Seal *v* Durga Prasad Singh	I. L. R. 42 Calc. 346; 19 C. W. N. 203	318
Kunja Lal Banerji *v.* Narsamba Debi	I. L. R. 42 Calc. 826	149
Kunthalammal *v.* Suryaprakasaroya Mudaliar	I. L. R. 38 Mad. 1096	464
Kunwar Bahadur *v.* Bindraban	I. L. R. 37 All. 195	284
Kushodhaj Bhakta *v.* Brojo Mohan Bhakta	19 C. W. N. 1228	154

L

Laban Sardar *v.* Choyen Mallik	19 C. W. N. 768	350
Lahar Puri *v.* Puran Nath	I. L. R. 37 All. 298; L. R. 42 I. A. 115; 19 C. W. N. 718	207
Lahaso Kuar *v.* Mahabir Tiwari	I. L. R. 37 All. 412	3
Lakhpati *v.* Rambodh Singh	I. L. R. 37 All. 350	27
Lakshmamma *v.* Ratnamma	I. L. R. 38 Mad. 474	431
Lakshmammal *v.* Narasimharaghava Aiyangar	I. L. R. 38 Mad. 746	156
Lal Bahadur Sahi *v.* Mackenzie	19 C. W. N. 229	474
Lal Bahadur Singh *v.* Abharan Singh	I. L. R. 37 All. 165	449
Law *v.* Benarashi Proshad	19 C. W. N. 287	288
Laxmandas Harakchand *v.* Baban	I. L. R. 39 Bom. 73	159
Laxmiram Lallubhai *v.* Balashankar Veniram	I. L. R. 39 Bom. 20	272
Ledu Coachman *v.* Hira Lal Bose	19 C. W. N. 919	121
Legal Remembrancer, Bengal *v.* Mon Mohan Ray	19 C. W. N. 672	140

Name of Case.	Volume and Page.	Column of Digest.
Lewis, *Re*	I. L. R. 38 Mad. 773	353
Lingayya *v.* Kanakamma	I. L. R. 38 Mad. 153	215
Lodd Govindoss Krishnadoss *v.* Rukmani Bai	I. L. R. 38 Mad. 438	367
Lucas, *In re*	I. L. R. 42 Calc. 109	239
Luchmi Missir *v.* Deoki Kuar	19 C. W. N. 174	257
M		
McLaren *v.* Veeriah Naidu	I. L. R. 38 Mad. 1102	288
Madan Mohan Chakravarti *v.* Sashi Bhusan Mukherji	19 C. W. N. 1211	166
Madan Mohan Nath Sahi *v.* Udai Nath Sahi	19 C. W. N. 200	62
Madana Mohana *v.* Purushothama	I. L. R. 38 Mad. 1105	202
Madhavrao Keshavrao *v.* Sahebrao Ganpatrao	I. L. R. 39 Bom. 119	117
Madhavrao Moreshvar *v.* Rama Kalu	I. L. R. 39 Bom. 131	91, 380
Madhu Sardar *v.* Khitish Chandra Banerjee	I. L. R. 42 Calc. 289	239
Madhusudan Pal *v.* Parbati Sundari Dasya	19 C. W. N. 760	379
Madhusudan Sen *v.* Rakhal Ch. Das	19 C. W. N. 1070	283, 285, 369
Madras Steam Navigation Co., Ld. *v.* Shalimar Works, Ld.	I. L. R. 42 Calc. 85	25
Madurai Pillai *v.* Muthu Chetty	I. L. R. 38 Mad. 823	367
Mahabir Prasad *v.* Taj Begam	19 C. W. N. 162	344
Mahajan Sheikh *v.* Emperor	I. L. R. 42 Calc. 708 ; 19 C. W. N. 224	462
Mahamaya Debi *v.* Haridas Haldar	I. L. R. 42 Calc. 455 ; 19 C. W. N. 208	343
Maha Prasad Singh *v.* Ramani Mohan Singh	I. L. R. 42 Calc. 116	249
Maharaj Narain Sheopuri *v.* Shashi Shekhareshwar Roy	I. L. R. 37 All. 313	67
Maharaja of Vizianagram *v.* The Collector of Vizagapatam	I. L. R. 38 Mad. 1128	292
Maharam Ali *v.* Ayesa Khatum	19 C. W. N. 1226	121
Maheshri Proshad *v.* Baijnath Hazari	19 C. W. N. 410	313
Mahim Chandra Sarkar *v.* Hara Kumari Dasee	I. L. R. 42 Calc. 561	224
Mahomed Bukth Majumdar *v.* Ajmon Raja	19 C. W. N. 967	309, 461
Mahomed Musa *v.* Aghore Kumar Ganguli	I. L. R. 42 Calc. 801 ; L. R. 42 I. A. 1 ; 19 C. W. N. 250	114
Mammali *v.* Kunhipakki Haji	I. L. R. 38 Mad. 67	283
Mandru Gadaba, *Re*	I. L. R. 38 Mad. 479	353
Mangal Sen *v.* Muhammad Husain	I. L. R. 37 All. 115	119
Manijan Bibi *v.* District Judge, Birbhum	I. L. R. 42 Calc. 351 ; 19 C. W. N. 290	306
Manipur Dey *v.* Bidhu Bhushan Sarkar	I. L. R. 42 Calc. 158	384
Maniruddin *v.* Jnanendra Nath Basu	19 C. W. N. 1115	351
Manjaya *v.* Shanmuga	I. L. R. 38 Mad. 684	214
Manjunath Subrayabhat *v.* Shankar Manjaya	I. L. R. 39 Bom. 26	461
Manners *v.* Harihar Koer	19 C. W. N. 149	258
Manorama Chowdhurani *v.* Shiva Sundari Mozumdar	I. L. R. 42 Calc. 480 ; 19 C. W. N. 366	371
Maqbul Fatima *v.* Amir Hasan Khan	I. L. R. 37 All. 1	71
Marshall *v.* Grandhi Venkata Ratnam	I. L. R. 42 Calc. 1169	117

Name of Case.	Volume and Page.	Column of Digest.
Masih-ud-din *v.* Imtiaz-un-nissa	I. L. R. 37 All. 40	281
Mathura Nath Singh *v.* Priyashashi Debi	19 C. W. N. 446	126
Mathura Prasad *v.* Ram Charan Lal	I. L. R. 37 All. 208	91
Matookdhari Shukul *v.* Jugdip Narain	19 C. W. N. 1319	39, 339
Meenakshi *v.* Muniandi Panikkan	I. L. R. 38 Mad. 1144	209
Meher Ali *v.* Kalai Khalasi	19 C. W. N. 1129	35
Meredith *v.* Sanjibani Dasi	I. L. R. 42 Calc. 313 ; 19 C. W. N. 273	30
Merwanji Muncherji Cama *v.* Secretary of State for India	I. L. R. 39 Bom. 664 ; L. R. 42 I. A. 185 ; 19 C. W. N. 1056.	50
Moberly *v.* The Municipal Council of Cuddalore	I. L. R. 38 Mad. 879	294
Mohabir Proshad Choudhury *v.* Chandra Sekhar Sahe	19 C. W. N. 1021	87
Moharaj Bahadur Singh *v.* Surendra Narain Singh	19 C. W. N. 152	289
Mohendra Nath Biswas *v.* Shamsunnessa Khatum	19 C. W. N. 1280	70, 286, 436
Mohendra Nath Maity *v.* Giris Ch. Maity	19 C. W. N. 1287	220
Mohideen Bee *v.* Syed Meer Saheb	I. L. R. 38 Mad. 1099	305
Mohini Mohan Misser *v.* Surendra Narayan Singh	I. L. R. 42 Calc. 550	236
Mohiuddin *v.* Pirthi Chand Lal	19 C. W. N. 1159	27, 360, 383
Moidin Kutti *v.* Poker	I. L. R. 38 Mad. 274	381
Mokshadayini Dasi *v.* Karnadhar Mandal	19 C. W. N. 1108	373
Mokunda Lal Chakrabarti *v.* Monmohini Debi	19 C. W. N. 472	209
Motabhoy Mulla Essabhoy *v.* Mulji Haridas	I. L. R. 39 Bom. 399 ; L. R. 42 I. A. 103 ; 19 C. W. N. 713	177
Motilal Shivlal *v.* The Bombay Cotton Manufacturing Co.	19 C. W. N. 621	110
Mottayappan *v.* Palani Goundan	I. L. R. 38 Mad. 226	176
Muhammad Inamullah Khan *v.* Narain Das	I. L. R. 37 All. 423	102
Muhammad Masih-ullah Khan *v.* Jarao Bai	I. L. R. 37 All. 226	98
Muhammad Wali Khan *v.* Muhammad Mohi-ud-din Khan	I. L. R. 37 All. 124	84
Mukerji *v.* Afzal Beg	I. L. R. 37 All. 155	348
Muktanath Roy Choudhury *v.* Jitendra Nath Roy Choudhury	19 C. W. N. 1295	429
Municipal Board of Agra *v.* Sudarshan Das Shastri	I. L. R. 37 All. 9	385
Municipal Board of Ajmere *v.* Kifayat-ullah	I. L. R. 37 All. 220	401
Municipal Committee of Nasik City *v.* The Collector of Nasik	I. L. R. 39 Bom. 422	66
Municipality of Ratnagiri *v.* Vasudeo Balkrishna	I. L. R. 39 Bom. 600	161
Munisamy Mudaly *v.* Abbu Reddy	I. L. R. 38 Mad. 705	102
Munna Lal *v.* Radha Kishan	I. L. R. 37 All. 591	96
Munna Lal Parrack *v.* Sarat Chunder Mukerji	I. L. R. 42 Calc. 776 ; L. R. 42 I. A. 88 ; 19 C. W. N. 561	268
Mutasaddi Mian *v.* Mahomed Idris	19 C. W. N. 764	408
Muthiah Chetti *v.* Suppan Servai	I. L. R. 38 Mad. 291	268
Muthukaruppan *v.* Muthu	I. L. R. 38 Mad. 1158	441
Muthu Ramakrishna Naicken *v.* Marimuthu Goundan	I. L. R. 38 Mad. 1036	209
Muthu Sastrigal *v.* Visvanatha Pandarasannadhi	I. L. R. 38 Mad. 660	459
Muthukrishnier *v.* Veeraraghava Iyer	I. L. R. 38 Mad. 297	453
Muthukumara Chetty *v.* Anthony Udayar	I. L. R. 38 Mad. 867	443
Muthusamier *v.* Sree Sreemethanithi Swamiyar	I. L. R. 38 Mad. 356	333

Name of Case.	Volume and Page.	Column of Digest.
N		
Nabaghan Badhai *v.* Raghunath Babu	19 C. W. N. 1303	53
Nabendra Kishore Roy *v.* Rahima Banu	19 C. W. N. 1015	418
Nabin Chandra Choudhury *v.* Bepin Chandra Choudhury	19 C. W. N. 953	42
Nabin Chandra Saha *v.* Hem Chandra Ray	19 C. W. N. 265	229
Naganna *v.* Sivanappa	I. L. R. 38 Mad. 1162	89
Nagappa Thevan, *Re*	I. L. R. 38 Mad. 602	354
Naku Amma *v.* Raghava Menon	I. L. R. 38 Mad. 79	311
Nalini Kanta Lahiri *v.* Sarnomoyi Debya	19 C. W. N. 531	69
Nand Kishore *v.* Suraj Mal	I. L. R. 37 All. 429	379
Narain Dat *v.* The Superintendent of Dehra Dun	I. L. R. 37 All. 69	252
Narasappayya *v.* Ganapathi Rao	I. L. R. 38 Mad. 280	164
Narayan Vithal Samant *v.* Jankibai	I. L. R. 39 Bom. 604	199
Narayana *v.* Rama	I. L. R. 38 Mad. 396	272
Narayana Nadan, *Re*	I. L. R. 38 Mad. 1044	135
Narayanan Moothad *v.* The Cochin Sircar	I. L. R. 38 Mad. 635	80
Narendra Chandra Lahiri *v.* Afifannessa Bibi	19 C. W. N. 751	46
Narendra Chandra Mandal *v.* Jogendra Narayan Roy	19 C. W. N. 537	414
Narendra Lal Khan *v.* Sarat Ch. Bhattacharya	19 C. W. N. 582	44
Narendra Nath Basu *v.* H. L. Stephenson	19 C. W. N. 129	33
Natesa *v.* Tangavelu	I. L. R. 38 Mad. 883	399
Natesa Ayyar *v.* Appavu Padayachi	I. L. R. 38 Mad. 178	122
Nathabhai Tricamlal *v.* Ranchhodlal Ramji	I. L. R. 39 Bom. 52	124
Nathan Sao *v.* Annie Besant	19 C. W. N. 535	328
Nathu *v.* Gokalia	I. L. R. 37 All. 658	10
Nathu *v.* Shadi	I. L. R. 37 All. 522	308
Navajee *v.* The Administrator-General of Madras	I. L. R. 38 Mad. 500	8
Nemo Deo *v.* Parbati Kumari	19 C. W. N. 549	422
Niamat Ali *v.* Ali Raza	I. L. R. 37 All. 86	81
Nichha Bibee *v.* Hemanta Kumar Ray	19 C. W. N. 758	85
Nilkanta Ray Chaudhury *v.* Lalit Mohan Banerjee	19 C. W. N. 933	119
Nilmoney Nag *v.* Durga Pada Banerjee	19 C. W. N. 957	357
Nilmoni Choudhuri *v.* Bashanta Kumar Banerji	19 C. W. N. 865	379
Nirod Barani Debi *v.* Chamatkarini Debi	19 C. W. N. 205	372
Nistarini Debya *v.* Behary Lal Mukerji	19 C. W. N. 52	226
Nowaghur Coal Co., Ld. *v.* Sashi Bhusan Ray	19 C. W. N. 375	318
Nripendra Nath Sahu *v.* Ashutosh Ghosh	19 C. W. N. 157	378
P		
Pachkauri Raut *v.* Ram Khilawan	I. L. R. 37 All. 57	87
Padarath Halwai *v.* Ram Nain Upadhia	I. L. R. 37 All. 474; L. R. 42 I. A. 163; 19 C. W. N. 991	446
Padman *v.* Hanwanta	19 C. W. N. 929	469
Panchkari Chatterjee *v.* Moharaj Bahadur Singh	19 C. W. N. 136	167
Parasuramayya *v.* Ramachandradu	I. L. R. 38 Mad. 432	279

Name of Case.	Volume and Page.	Column of Digest.
Parman *v.* Bhora Nek Ram	I. L. R. 37 All. 380	372
Parmeshari Dasi *v.* Jagat Ch. Das	19 C. W. N. 900	104
Parmeshwar Dat *v.* Anardan Dat	I. L. R. 37 All. 113	32
Parsotam Rao Tantia *v.* Radha Bai	I. L. R. 37 All. 318	282
Parushullah Sheikh *v.* Sital Ch. Das	19 C. W. N. 1110	456
Parvatibai *v.* Bhagwant Vishwanth Pathak	I. L. R. 39 Bom. 593	227
Patiram Banerjee *v.* Kanknarrah Co., Ld.	I. L. R. 42 Calc. 1050 ; 19 C. W. N. 623	119, 416
Paul *v.* Robson	I. L. R. 42 Calc. 46	164
Payidanna *v.* Lakshminarasamma	I. L. R. 38 Mad. 1076	76
Peary Chaudhury *v.* Sonoo Dass	19 C. W. N. 419	105
Peary Lal Das *v.* Peary Lal Dawn	19 C. W. N. 903	79
Peary Mohan Mukherji *v.* Chandra Sekhar Sarkar	19 C. W. N. 1132	328
Periya Aiya Ambalam *v.* Shunmugasundaram	I. L. R. 38 Mad. 903	458
Periyasami Kone *v.* Muthia Chettiar	I. L. R. 38 Mad. 677	154
Phatmabi *v.* Haji Musa Sahib	I. L. R. 38 Mad. 491	308
Phul Kuar *v.* Hashmatullah Khan	I. L. R. 37 All. 460	91
Pioneer Bank, Limited, *In the matter of*	I. L. R. 39 Bom. 16	111
Ponnammal *v.* Ramamirda Aiyar	I. L. R. 38 Mad. 829	89
Ponnusamy Padayachi *v.* Karuppudayan	I. L. R. 38 Mad. 843	298
Pothi Ram *v.* Islam Fatima	I. L. R. 37 All. 212	121
Pranjivandas Shivlal *v.* Ichharam	I. L. R. 39 Bom. 734	218
Pran Krishna Saha *v.* Trailakhya Nath Chaudhuri	19 C. W. N. 911	41
Prasanna Venkatachella Reddiar *v.* The Collector of Trichinopoly	I. L. R. 38 Mad. 1064	82
Prasanno Kumar Chuckerbutty *v.* Prokash Ch. Dutt	19 C. W. N. 329	435
Prem Nath Tiwari *v.* Chatarpal Man Tiwari	I. L. R. 37 All. 638	77
Prokash Chandra Ghose *v.* Hasan Banu Bibi	I. L. R. 42 Calc. 1146 ; 19 C. W N. 389	324
Promotha Nath Chakravarti *v.* Mohini Mohan Sen	19 C. W. N. 1200	377
Protap Chandra Ray *v.* Judhistir Das	19 C. W. N. 143	249, 254
Puncha Thakur *v.* Bindeshri Thakur	19 C. W. N. 580	442
Purna Chandra Moulik *v.* Dengar Chandra Pal	19 C. W. N. 334	140
Purushottam Daji *v.* Pandurang Chintaman	I. L. R. 39 Bom. 149	425
Puttu Lal *v.* Parbati Kunwar	I. L. R. 37 All. 359 ; L. R. 42 I. A. 155 ; 19 C. W. N. 841	203

Q

Qasim Beg *v.* Muhammad Zia Beg	I. L. R. 37 All. 640	283

R

R. D. Sethna *v.* Jwalaprasad Gayaprasad	I. L. R. 39 Bom. 513	233
Radha Gobinda Mojumdar *v.* Kumarkhali Municipality	19 C. W. N. 1027	34
Radha Kishen *v.* East Indian Ry. Co.	19 C. W. N. 62	394
Raghunath Das *v.* Sundar Das Khetri	I. L. R. 42 Calc. 72	238
Raghunath Singh *v.* William Cox	19 C. W. N. 268	38
Raghunatha Row Sahib *v.* Vellamoonji Goundan	I. L. R. 38 Mad. 1140	298

Name of Case.	Volume and Page.	Column of Digest.
Rahimunnessa Bibee *v.* Manik Jan	19 C. W. N. 76	308, 461
Rajagopala *v.* Vijayaraghavalu	I. L. R. 38 Mad. 1184	128
Rajagopalacharyulu *v.* Secretary of State	I. L. R. 38 Mad. 997	301
Raja Rajeswara Dorai *v.* Arunachellan Chettiar	I. L. R. 38 Mad. 321	270
Rajab Ali *v.* Dino Nath Saha	19 C. W. N. 1305	335
Rajab Ali Choudhury *v.* Hadayet Ali Choudhury	19 C. W. N. 1151	188
Rajani Kanta Ghosh *v.* Rama Nath Ray	19 C. W. N. 458	382
Rajendra Prosad Jha *v.* Upendra Nath Jha	19 C. W. N. 633	413
Rajkrishna Rudra *v.* Phakir Dome	19 C. W. N. 478	60, 167
Rajwant Prasad Pande *v.* Ram Ratan Gir	I. L. R. 37 All. 485; L. R. 42 I. A. 171	406
Rakhal Das Sinha *v.* King-Emperor	19 C. W. N. 248	132
Ram Autar Tewari *v.* Deoki Tewari	I. L. R. 37 All. 456	83
Rambilas, *Re*	I. L. R. 38 Mad. 639	356
Ram Chandra Banka *v.* Rawatmull	19 C. W. N. 1172	240
Ram Chandra Martand Waikar *v.* Vinayek Venkatesh Kothekar	I. L. R. 42 Calc. 384	212
Ramchandra Natha *v.* G. I. P. Railway Company	I. L. R. 39 Bom. 485	393
Ramchandra Venkaji Naik *v.* Kallo Devji Deshpande	I. L. R. 39 Bom. 587	158, 198
Ram Charan Lal *v.* Karim-un-nissa Bibi	I. L. R. 37 All. 12	11
Ram Charan Law *v.* Fatima Begam	I. L. R. 42 Calc. 933; 19 C. W. N. 1061.	308
Ramdas Gopaldas *v.* Baldevdasji Kaushalyadasji	I. L. R. 39 Bom. 168	221
Ram Das Mukerjee *v.* Biprodas Pal Choudhery	19 C. W. N. 35	39, 41
Ram Deo Pande *v.* Emperor	19 C. W. N. 223	131
Ramdhari Singh *v.* Parmanand Singh	19 C. W. N. 1183	107, 230, 419
Ram Dulari *v.* Balak Ram	I. L. R. 37 All. 120	181
Ramjas Agarwalla *v.* Broja Mohan Singh	19 C. W. N. 887	318
Ram Kanai Singh Deb Darpashaha *v.* Mathewson	I. L. R. 42 Calc. 1029; L. R. 42 I. A. 97; 19 C. W. N. 585	352
Ram Kishore Sadkhan *v.* Manindra Mohan Ray	19 C. W. N. 646	173
Ramlal *v.* Narsingdas	19 C. W. N. 193	350
Ram Nath *v.* Harani	I. L. R. 37 All. 467	51
Ram Prasanna Nandy *v.* Secretary of State for India	19 C. W. N. 652	253
Ram Raja Dat *v.* Sheo Dayal	I. L. R. 37 All. 439	136
Ram Ranjan Roy *v.* Emperor	I. L. R. 42 Calc. 422; 19 C. W. N. 28	385
Ram Saran Lall *v.* Ram Narayan Singh	I. L. R. 42 Calc. 305; 19 C. W. N. 466	243
Ram Sarup Bhagat *v.* Bansi Mandar	I. L. R. 42 Calc. 742; 19 C. W. N. 1118	50
Ram Singh *v.* Girraj Singh	I. L. R. 37 All. 41	12
Ram Subheg Singh *v.* King-Emperor	19 C. W. N. 972	139
Rama *v.* Bhagchand	I. L. R. 39 Bom. 41	72
Ramadhin Singh *v.* Jadunandan Singh	19 C. W. N. 54	165
Ramakrishna Chetty *v.* Subbaraya Iyer	I. L. R. 38 Mad. 101	268
Ramalingathudayar *v.* Unnamalai Achi	I. L. R. 38 Mad. 791	118
Ramanathan *v.* Arunachellam	I. L. R. 38 Mad. 766	182
Ramaswamy *v.* Rasi	I. L. R. 38 Mad. 149	462
Ramaswami Iyer *v.* The Madras Times Printing and Publishing Co., Ltd.	I. L. R. 38 Mad. 991	109

Name of Case.	Volume and Page.	Column of Digest.
Rameshar Malia *v.* Ram Ch. Acharya	19 C. W. N. 1082	285
Rameshwar Mondal *v.* Provabati Debi	19 C. W. N. 313	230, 425
Rang Lal Kunwar *v.* Kishori Lal	I. L. R. 37 All. 278	10
Rangasami Pillai, *Re*	I. L. R. 38 Mad. 555	130
Ranjit Singha *v.* Jnanendra Ch. Sen	19 C. W. N. 963	388
"Rappenfels," *Re* cargo *ex* S.S.	I. L. R. 42 Calc. 334	115
Ras Behari Lal *v.* Akhai Kunwar	I. L. R. 37 All. 91	167
Rashmoni Dasi *v.* Ganoda Sundari Dasi	19 C. W. N. 84	196, 411
Rasulkhan Hamadkhan *v.* Secretary of State for India	I. L. R. 39 Bom. 494	259, 279
Rathna Mudali *v.* Perumal Reddy	I. L. R. 38 Mad. 310	446
Ravaneshwar Prasad Singh *v.* Baijnath Ram Goenka	I. L. R. 42 Calc. 897 ; L. R. 42 I. A. 79 ; 19 C. W. N. 481	415
Receiver of the Nidadavole and Medur Estates, The *v.* Suraparazu	I. L. R. 38 Mad. 295	299
Renka *v.* Bhola Nath	I. L. R. 37 All. 177	222
Risal Singh *v.* Balwant Singh	I. L. R. 37 All. 496	9
Robert William Anderson *v.* The Bank of Upper India, Ld.	I. L. R. 37 All. 390	117
Rohim Buksh Mandal *v.* Shajad Ahmad Chaudhury	19 C. W. N. 1311	124, 155, 304
Romes Ch. Biswas *v.* Golam Nabi Fakir	19 C. W. N. 867	37
Rosario Quadros, *Re*	I. L. R. 38 Mad. 551	472
Rukmini Koeri *v.* Nilmani Bandapadhya	19 C. W. N. 1309	344
Rup Chand Ghosh *v.* Narendra Krishna Ghosh	19 C. W. N. 112	35
Rup Kishore Lal *v.* Neman Bibi	I. L. R. 42 Calc. 842 ; 19 C. W. N. 791	440
Rupan Singh *v.* Champa Lal	I. L. R. 37 All. 81	448

S

Sabapathy *v.* Vanmahalinga	I. L. R. 38 Mad. 959	100
Sabitri Thakurain *v.* Savi	19 C. W. N. 1297	430
Sabodra Bibi *v.* Bageshwari Singh	I. L. R. 37 All. 529	364
Sadananda Mandal *v.* Krishna Mandal	I. L. R. 42 Calc. 381 ; 19 C. W. N. 124	160
Safer Ali Mondal *v.* Golam Mondal	19 C. W. N. 1236	380
Sahadeo Gir *v.* Deo Dutt Misir	I. L. R. 37 All. 323	87
Sahadora Mudiali *v.* Nabin Chand Boral	I. L. R. 42 Calc. 638 ; 19 C. W. N. 1030	231, 418
Sailaja Prosad Chatterjee *v.* Jadu Nath Bose	19 C. W. N. 240	371, 374
Saminatha Pillai *v.* Krishna Iyer	I. L. R. 38 Mad. 548	329
Sankararama *v.* Padmanabha	I. L. R. 38 Mad. 25	73
Sanyasi Charan Mandal *v.* Asutosh Ghose	I. L. R. 42 Calc. 225	319
Sarada Prosad Bhuttacharjee *v.* Monmatha Nath Mitter	19 C. W. N. 870	258
Sarala Sundari Debi *v.* Hazari Dasi Debi	I. L. R. 42 Calc. 953 ; 19 C. W. N. 513	192
Sarju Prasad *v.* Mahadeo Pande	I. L. R. 37 All. 450	379
Sarojbashini Debi *v.* Sripati Charan Chowdhry	I. L. R. 42 Calc. 702 ; 19 C. W. N. 332	383

Name of Case.	Volume and Page.	Column of Digest.
Sarvarayudu *v.* Venkataraju	I. L. R. 38 Mad. 459	296
Sasi Bhusan Dey *v.* Umakanta Dey	19 C. W. N. 1143	38
Sasi Bhusan Hazra *v.* Eshabar Ali	19 C. W. N. 636	40, 422
Sasi Bhusan Mukerjee *v.* Radha Nath Bose	19 C. W. N. 835	73, 87
Satwaji Balajirav *v.* Sakharlal Atmaramshet	I. L. R. 39 Bom. 175	155
Secretary of State for India *v.* Abdul Salam Khan	I. L. R. 37 All. 347	253
Secretary of State for India *v.* Bai Rajbai	I. L. R. 39 Bom. 625 ; L. R. 42 I. A. 229 ; 19 C. W. N. 1087	251
Secretary of State for India *v.* Bapuji Mahadeo	I. L. R. 39 Bom. 572	275
Secretary of State for India *v.* Jawahir Lal	I. L. R. 37 All. 338	358
Secretary of State for India *v.* Kirtibas Bhupati Harichandan Mahapatra	I. L. R. 42 Calc. 710 ; L. R. 42 I. A. 30 ; 19 C. W. N. 65	60
Secretary of State *v.* Raghunatha Tathachariar	I. L. R. 38 Mad. 108	192
Secretary to the Commissioner of Salt, Abkari and Separate Revenue, Revenue Board, Madras *v.* Mrs. Orr	I. L. R. 38 Mad. 646	426
Secretary to the Commissioner of Salt, Abkari and Separate Revenue, The *v.* The South Indian Bank, Limited, Tinnevelly	I. L. R. 38 Mad. 349	427
Seetamma *v.* Venkataramanayya	I. L. R. 38 Mad. 308	442
Sellandi, *Re*	I. L. R. 38 Mad. 552	145
Seshagiri Row *v.* Narayanaswami Naidu	I. L. R. 38 Mad. 795	249
Seshamma *v.* Suryanarayana	I. L. R. 38 Mad. 643	66
Seshappier *v.* Subramania Chettiar	I. L. R. 38 Mad. 783	280
Shaikh Galim *v.* Sadarjan Bibi	19 C. W. N. 1332	381
Sharafat Bahadur *v.* Sultan Begam	19 C. W. N. 502	304
Shashi Rajbanshi *v.* Emperor	I. L. R. 42 Calc. 856 ; 19 C. W. N. 295	346
Sheogobind Singh *v.* Dhanukdhari Singh	19 C. W. N. 1291	98
Sheo Harakh *v.* Ram Chandra	I. L. R. 37 All. 76	34
Sheonandan Lal *v.* Zainal Abdin	I. L. R. 42 Calc. 849 ; 19 C. W. N. 899	151
Sher Khan *v.* Debi Prasad	I. L. R. 37 All. 254	13
Shib Sahai *v.* Saraswati	I. L. R. 37 All. 583	205
Shiva Chandar Singh *v.* Ram Chandar Singh	I. L. R. 37 All. 595	12
Shivalingappa Shintre *v.* Revappa	19 C. W. N. 762	106
Shoharat Singh *v.* Jafri Bibi	19 C. W. N. 225	307
Siliman Saib *v.* Hasson	I. L. R. 38 Mad. 247	88
Sinnu Goundan, *Re*	I. L. R. 38 Mad. 1028	146
Sitaram Morappa *v.* Shri Khandoba	I. L. R. 39 Bom. 165	157
Sitharama *v.* Krishnaswami	I. L. R. 38 Mad. 374	266
Sivaganga Zamindary, The Manager to the lessees of the *v.* Chidambaram Chetti	I. L. R. 38 Mad. 524	298
Sivanupandia Thevan, *Re*	I. L. R. 38 Mad. 793	357
Sivaprasad Ram *v.* Tricomdas Coverji Bhoja	I. L. R. 42 Calc. 926	247
Sonu Janardan *v.* Arjun walad Barku	I. L. R. 39 Bom. 552	313
Sornalinga Mudali *v.* Pachai Naicken	I. L. R. 38 Mad. 680	375
Soudamini Ghosh *v.* Gopal Ch. Ghosh	19 C. W. N. 948	22
Sri Sri Sri Chandra Deo *v.* Srinivasa Charlu	I. L. R. 38 Mad. 235	123
Sri Rajagopalaswami Temple *v.* Jagannadha Pandiajiar	I. L. R. 38 Mad. 155	257
Sri Raja Parthasarathi Appa Row Bahadur *v.* Secretary of State	I. L. R. 38 Mad. 620	302

Name of Case.	Volume and Page.	Column of Digest.
Sri Rajah Prakasarayanim Garu *v.* Venkata Rao	I. L. R. 38 Mad. 160	172
Srinath Roy *v.* Dinabandhu Sen	I. L. R. 42 Calc. 489	186
Srinivasa Ayyangar *v.* The Official Assignee of Madras	I. L. R. 38 Mad. 472	368
Srinivasa Ayyangar *v.* Radhakrishnam Pillai	I. L. R. 38 Mad. 667	447
Srinivasa Ayyangar *v.* Secretary of State	I. L. R. 38 Mad. 92	267
Srinivasa Iyengar *v.* Thiruvengadathaiyangar	I. L. R. 38 Mad. 556	219
Srinivasa Rau *v.* Pichai Pillai	I. L. R. 38 Mad. 650	84
Sriramulu *v.* Veerasalingam	I. L. R. 38 Mad. 585	28
Srirangam, The Chairman, Municipal Council, *v.* Subba Pandithar	I. L. R. 38 Mad. 456	295
Stamp Reference by the Board of Revenue	I. L. R. 37 All. 125	427
Stamp Reference by the Board of Revenue	I. L. R. 37 All. 159	426
Stamp Reference by the Board of Revenue	I. L. R. 37 All. 264	427
Stevens *v.* Janaki Ballabh	19 C. W. N. 80	228
Subappa *v.* Venkappa	I. L. R. 39 Bom. 335	286
Subba *v.* Venkatrami	I. L. R. 38 Mad. 1187	205
Subbarayudu *v.* Lakshminarasamma	I. L. R. 38 Mad. 775	96
Subbaroya *v.* Rajagopala	I. L. R. 38 Mad. 887	282
Subramania *v.* Balasubramania	I. L. R. 38 Mad. 927	447
Subramania *v.* Vaithinatha	I. L. R. 38 Mad. 682	157
Subramania Ayyar, *Re*	I. L. R. 38 Mad. 304	303
Sudamdih Coal Co., Ld. *v.* Empire Coal Co., Ld.	I. L. R. 42 Calc. 942	247
Sudhakar Raut *v.* Sadasiv Jhatap Singh	19 C. W. N. 1113	273
Sukhia Bewa *v.* Secretary of State for India	19 C. W. N. 551	432
Sukhlal Chundermull *v.* Eastern Bank, Ld.	I. L. R. 42 Calc. 735	17
Sukumari Ghosh *v.* Gopi Mohan Goswami,	19 C. W. N. 880	127
Suleman Haji Usman *v.* Shaikh Ismail	I. L. R. 39 Bom. 580	81
Sundar Kunwar *v.* Dina Nath	I. L. R. 37 All. 280	10
Sundarambal Ammal *v.* Yogavanagurukkal	I. L. R. 38 Mad. 850	100
Sundararaja Aiyangar *v.* Lakshmiammal	I. L. R. 38 Mad. 788	119
Sundra *v.* Sakharam Gopalshet	I. L. R. 39 Bom. 29.	68
Suraj Bhan *v.* Somwarpuri	I. L. R. 37 All. 662	51
Suraj Mal *v.* Hira Kunwar	I. L. R. 37 All. 94	13
Suryanarayana *v.* Patanna	I. L. R. 38 Mad. 608	297
Susil Kumar Banerji *v.* Apsari Debi	19 C. W. N. 826	467
Syama Ch. Baisya *v.* Prafulla Sundari Gupta	19 C. W. N. 882	3, 373, 461
Syed Ibrahim Sahib *v.* Arumugathayee	I. L. R. 38 Mad. 18	327

T

Tara Kumari *v.* Chaturbhuj Narayan Singh	I. L. R. 42 Calc. 1179 ; L. R. 42 I. A. 192 ; 19 C. W. N. 1119	211
Tara Sankar Ghosh *v.* Basiruddi	19 C. W. N. 970	43, 264
Tarak Nath Adhikari *v.* Bhubaneshwar Mitra	I. L. R. 42 Calc. 780	328
Taylor (Miss) *v.* Charles Bleach	I. L. R. 39 Bom. 182	162
Tepu Mahammad *v.* Tefayet Mahammad	19 C. W. N. 772	255
Thamman Singh *v.* Dal Singh	I. L. R. 37 All. 7	11
Thayammal *v.* Kuppanna Koundan	I. L. R. 38 Mad. 1125	208

Name of Case.	Volume and Page.	Column of Digest.
Thiruvengadathaiyangar *v.* Ponnappiengar	I. L. R. 38 Mad. 1176	402
Thomas French *v.* Julia French	I. L. R. 39 Bom. 136	49
Tika Sahu *v.* Chirkat Sahu	19 C. W. N. 614	381
Timangowda *v.* Benepgowda	I. L. R. 39 Bom. 472	428, 445
Tirupatirayudu Naidu *v.* Lakshminarasamma	I. L. R. 38 Mad. 71	455
Tribhovandas Narotamdas *v.* Abdulally Hakimji Pagdivala	I. L. R. 39 Bom. 568	98
Tulsidas Lallubhai *v.* The Bharat Khand Cotton Mill Co., Ltd.	I. L. R. 39 Bom. 47	111
Tulsi Ram *v.* Abrar Hussain	I. L. R. 37 All. 654	133

U

Ujir Sheikh *v.* Syed Ali Sheikh	19 C. W. N. 990	147
Uma Charan Mandal *v.* Midnapur Zemindary Co.	19 C. W. N. 270	188
Umabai *v.* Amritrao Anant	I. L. R. 39 Bom. 80	153
Umrao Kunwar *v.* Badri	I. L. R. 37 All. 422	226
Upendra Nath Kalamuri *v.* Kusum Kumari Dasi	I. L. R. 42 Calc. 440; 19 C. W. N. 520	180
Utma Kuar *v.* Bhagwanta Kuar	I. L. R. 37 All. 515	195

V

Vaikuntarama Pillai *v.* Authimoolam Chettiar	I. L. R. 38 Mad. 1071	326
Vairavan *v.* Avicha	I. L. R. 38 Mad. 275	269
Valli Ammal *v.* The Corporation of Madras	I. L. R. 38 Mad. 41	292
Varahaswami *v.* Ramachandra Raju	I. L. R. 38 Mad. 138	442
Vasonji Morarji *v.* Chanda Bibi	I. L. R. 37 All. 369; 19 C. W. N. 873	204
Vasudeo Raghunath *v.* Janardhan Sadasiv	I. L. R. 39 Bom. 507	444
Vasudeva Aiyar *v.* The Negapatam Devasthanam Committee	I. L. R. 38 Mad. 594	402
Vellore Taluk Board, The *v.* Gopalasami Naidu	I. L. R. 38 Mad. 801	118
Vencataraju *v.* Ramanamma	I. L. R. 38 Mad. 158	404
Venkaji Narayan *v.* Gopal Ramchandra	I. L. R. 39 Bom. 55	169, 327
Venkanna *v.* Sri Raja Rama Row	I. L. R. 38 Mad. 1155	296
Venkappa, *Re*	I. L. R. 38 Mad. 305	354
Venkata Sastrulu *v.* Sitaramudu	I. L. R. 38 Mad. 891	296
Venkatagiri, Raja of *v.* Ayyapareddi	I. L. R. 38 Mad. 738	295
Venkatanarayana Pillai *v.* Subbammal	I. L. R. 38 Mad. 406; L. R. 42 I. A. 125; 19 C. W. N. 641	19
Venkatapathi Nayanivaru *v.* Mahomed Sahib	I. L. R. 38 Mad. 531	294

Name of Case.	Volume and Page.	Column of Digest.
Venkatarama *v.* Saminatha	I. L. R. 38 Mad. 797	129
Venkataramana Iyer *v.* Narasinga Rao	I. L. R. 38 Mad. 134	362
Venkataramier *v.* Vaithalinga Thambiran	I. L. R. 38 Mad. 655	299
Venkataranga Row *v.* Narasimha Rao	I. L. R. 38 Mad. 509	19
Venkatasubbiah *v.* Secretary of State	I. L. R. 38 Mad. 424	191
Venkatasubbaiyer *v.* Krishnamurthy	I. L. R. 38 Mad. 442	287
Venkatesha Malia *v.* Ramaya Hegade	I. L. R. 38 Mad. 1192	403
Venkatrama *v.* Krishna	I. L. R. 38 Mad. 1091	141
Venkiah *v.* Krishnamoorthy	I. L. R. 38 Mad. 141	156
Vijiaraghavulu Pillai *v.* Theagoraya Chetti	I. L. R. 38 Mad. 581	293
Virchand Vajikaranshet *v.* Kondu	I. L. R. 39 Bom. 729	277
Vithal Ramkrishna *v.* Prahlad Ramkrishna	I. L. R. 39 Bom. 373	217
Y		
Yakub Ali *v.* Durga Prasad	I. L. R. 37 All. 518	182
Yellammal *v.* Ayyappa Naick	I. L. R. 38 Mad. 972	280
Yellava Sakreppa *v.* Bhimappa Gireppa	I. L. R. 39 Bom. 68	191
Yeshwant Vishnu *v.* Keshavrao Bhaiji	I. L. R. 39 Bom. 316	184
Z		
Zamir Ahmad *v.* Abdul Razaq	I. L. R. 37 All. 472	365
Zamorin of Calicut *v.* Achutha Menon	I. L. R. 38 Mad. 916	284

ANNUAL DIGEST

OF

THE HIGH COURT REPORTS

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1915.

A

ABANDONMENT.

See UNDER-RAIYATI HOLDING.
I. L. R. 42 Calc. 751

ABATEMENT OF SUIT.

See CIVIL PROCEDURE CODE (1908) S. 92.
I. L. R. 38 Mad. 296

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 92 AND 93.
I. L. R. 38 Mad. 1064

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 373.
I. L. R. 38 Mad. 643

ABETMENT.

See PENAL CODE, S. 114.
19 C. W. N. 28

See PUBLIC PROSECUTOR, DUTY OF
I. L. R. 42 Calc. 422

See TRADING WITH ENEMY.
19 C. W. N. 1239

ABETMENT OF SUPPLY.

See TRADING WITH THE ENEMY.
I. L. R. 42 Calc. 1094

ABSENCE.

See COMPLAINANT.
I. L. R. 42 Calc. 365

ABSOLUTE GIFT.

See HINDU LAW—WILL.
I. L. R. 42 Calc. 561

ACCEPTANCE.

——— **by creditor—**

See LIMITATION.
I. L. R. 38 Mad. 374

ACCIDENT.

——— **plea of—**

See PENAL CODE, S. 80.
19 C. W. N. 1043

ACCOUNT.

See CONTINUOUS ACCOUNT.

——— **suit for—**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 13, 15D, 16.
I. L. R. 39 Bom. 73

See HINDU LAW—PARTITION.
I. L. R. 38 Mad. 556

——— *Continuous—Cause of action.* Where there are dealings between two parties which give rise to a continuous account so that one item, if not paid, shall be united with another and form one continuous demand, the whole together forms but one cause of action and cannot be divided. *Bonsey* v. *Wordsworth, 18 C. B. 325, 334*, followed. KEDAR NATH MITRA *v.* DINOBANDHU SHAHA (1915) . . **19 C. W. N. 724**
I. L. R. 42 Calc. 1043

ACCOUNTS.

See DISSOLUTION OF PARTNERSHIP.
I. L. R. 42 Calc. 914

ACCOUNTS AND ADMINISTRATION.

——— **suit for—**

See COURT FEES ACT (VII OF 1870), S. 7, CL. IV (F) AND S. 11.
I. L. R. 39 Bom. 545

ACCUSED.

——— **examination of—**

See CHARGE. **I. L. R. 42 Calc. 957**

ACCUSED—*concld.*

——— **right of**—

See CHARGE. **I. L. R. 42 Calc. 957**

See CROSS-EXAMINATION. **I. L. R. 42 Calc. 957**

ACQUIESCENCE.

See PROBATE. **I. L. R. 42 Calc. 480**

1. ——— *Possession for many years by co-sharer—Presumption—Consent.* When one co-sharer has been in exclusive possession of a particular plot for a very long time and has made constructions thereon, the presumption is that he is in possession with the consent of the other co-sharers. The other co-sharers cannot after lying by for many years come in and ask to have the constructions demolished. LAHASO KUAR *v.* MAHABIR TIWARI (1915) **I. L. R. 37 All. 412**

2. ——— *when knowledge comes after act.* There can be no acquiescence without full knowledge both of the right infringed and the acts which constitute the infringement. There is a distinction between acquiescence occurring while the act acquiesced in is in progress and acquiescence taking place after the act has been completed, for a mere delay to take legal proceedings cannot by itself constitute a bar to such proceedings unless the delay on his part, after he has acquired full knowledge, has affected or altered the position of his opponent. SYAMA CHARAN BAISYA *v.* PRAFULLA SUNDARI GUPTA (1914) **19 C. W. N. 882**

ACQUISITION OF LAND.

See LAND ACQUISITION ACT (I OF 1894).

ACQUITTAL.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 438. **I. L. R. 38 Mad. 1028**

See CRIMINAL PROCEDURE CODE, S. 439. **19 C. W. N. 184**

——— **effect of**—

See COMPLAINANT. **I. L. R. 42 Calc. 365**

——— *Revision—Practice—Interference by High Court in revision with an order of acquittal on the application of a private party—Criminal Procedure Code (Act V of 1898), s. 439.* The High Court has jurisdiction, under s. 439 of the Criminal Procedure Code, to set aside an order of acquittal, but it has now become a settled practice that it will not ordinarily interfere, in revision, in such cases, at the instance of a private prosecutor. *Queen-Empress* v. *Shekh Saheb Badrudin, I. L. R. 8 Bom. 197, Heerabai* v. *Framji Bhikaji, I. L. R. 15 Bom. 349, Thandavan* v. *Perianna, I. L. R. 14 Mad. 363, Queen-Empress* v. *Ala Baksh, I. L. R. 6 All. 484, Queen-Empress* v. *Prag Dat, I. L. R. 20 All. 459, In the matter of Sheikh Aminuddin, I. L. R. 24 All. 346, Qayyum*

ACQUITTAL—*concld.*

Ali v. *Faiyaz Ali, I. L. R. 27 All. 359, In re Municipal Committee of Dacca* v. *Hingoo Raj, I. L. R. 8 Calc. 895,* and *Deputy Legal Remembrancer* v. *Karuna Baistobi, I. L. R. 22 Calc. 164,* followed. *Rakhal Das Roy* v. *Kailash Bannu, 11 C. L. J. 113,* explained by Jenkins C. J. FAUJDAR THAKUR *v.* KASI CHOWDHURY (1914) **I. L. R. 42 Calc. 612**

ACT.

——— **1839—XXXII.**

See INTEREST ACT.

——— **1858—XXXV.**

See LUNACY ACT.

——— **1859—I.**

See MERCHANT SEAMEN ACT.

——— **1859—XI.**

See REVENUE SALE LAW.

——— **1859—XIII.**

See WORKMAN'S BREACH OF CONTRACT ACT.

——— **1860—XLV.**

See PENAL CODE.

——— **1863—XX.**

See RELIGIOUS ENDOWMENTS ACT.

——— **1864—II.**

See REVENUE RECOVERY ACT.

——— **1865—V.**

See PROBATE AND ADMINISTRATION ACT.

——— **1865—X.**

See SUCCESSION ACT.

——— **1869—IV.**

See DIVORCE ACT.

——— **1870—VII.**

See COURT FEES ACT.

——— **1871—XXIII.**

See PENSIONS ACT.

——— **1872—I.**

See EVIDENCE ACT.

——— **1872—IX.**

See CONTRACT ACT.

——— **1873—III.**

See OATHS ACT.

——— **1874—II.**

See ADMINISTRATOR-GENERAL'S ACT.

——— **1874—XIV.**

See SCHEDULED DISTRICTS ACT.

——— **1875—IX.**

See MAJORITY ACT.

——— **1877—I.**

See SPECIFIC RELIEF ACT.

ACT—*contd.*

——— **1877—III.**

See REGISTRATION ACT.

——— **1877—XV.**

See LIMITATION ACT, 1877.

——— **1878—XI.**

See ARMS ACT.

——— **1881—V.**

See PROBATE AND ADMINISTRATION ACT.

——— **1881—XXVI.**

See NEGOTIABLE INSTRUMENTS ACT.

——— **1882—II.**

See TRUSTS ACT.

——— **1882—IV.**

See TRANSFER OF PROPERTY ACT.

——— **1882—V.**

See EASEMENTS ACT.

——— **1882—VI.**

See COMPANIES ACT.

——— **1882—XIV.**

See CIVIL PROCEDURE CODE, 1882.

——— **1882—XV.**

See PRESIDENCY SMALL CAUSE COURTS ACT.

——— **1885—VIII.**

See BENGAL TENANCY ACT.

——— **1886—II.**

See INCOME TAX ACT.

——— **1887—VII.**

See SUITS' VALUATION ACT.

——— **1887—IX.**

See PROVINCIAL SMALL CAUSE COURTS ACT.

——— **1887—XII.**

See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT.

See CIVIL COURTS ACT.

——— **1889—II.**

See STAMP ACT.

——— **1889—VII.**

See SUCCESSION CERTIFICATE ACT.

——— **1890—VIII.**

See GUARDIANS AND WARDS ACT.

——— **1890—IX.**

See RAILWAYS ACT.

——— **1894—I.**

See LAND ACQUISITION ACT.

——— **1897—III.**

See EPIDEMIC DISEASES ACT.

ACT—*concld.*

——— **1898—V.**

See CRIMINAL PROCEDURE CODE.

——— **1898—VI.**

See POST OFFICE ACT.

——— **1899—II.**

See STAMP ACT.

——— **1899—IX.**

See ARBITRATION ACT.

——— **1900—XI.**

See LIMITATION AMENDMENT ACT.

——— **1903—XV.**

See EXTRADITION ACT.

——— **1907—III.**

See PROVINCIAL INSOLVENCY ACT.

——— **1908—V.**

See CIVIL PROCEDURE CODE.

——— **1908—VI.**

See EXPLOSIVE SUBSTANCES ACT.

——— **1908—IX.**

See LIMITATION ACT.

——— **1908—XVI.**

See REGISTRATION ACT.

——— **1909—III.**

See PRESIDENCY TOWNS INSOLVENCY ACT.

——— **1910—I.**

See PRESS ACT.

——— **1910—IX.**

See ELECTRICITY ACT.

——— **1912—II.**

See CO-OPERATIVE SOCIETIES ACT.

——— **1912—V.**

See PROVIDENT INSURANCE SOCIETIES ACT.

——— **1912—XIII.**

See DELHI LAWS ACT.

——— **1913—VI.**

See MUSSALMAN WAKF VALIDATING ACT.

ACTION IN REM.

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

ADDITIONAL EVIDENCE.

See APPEAL. **I. L. R. 42 Calc. 675**

ADJOURNMENT.

——— **oral application for—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 179. **I. L. R. 38 Mad. 695**

ADJUSTMENT.

——— plea of—

See EXECUTION OF DECREE.
I. L. R. 37 All. 531

ADMINISTRATION SUIT.

See HINDU LAW—WILL.
I. L. R. 42 Calc. 561

ADMINISTRATOR-GENERAL'S ACT (II OF 1874).

——— **ss. 20, 52 and 54**—*Grant of Letters of Administration to the Administrator-General—Vesting of the estate in him—Sale by him of lands for his commission without sanction of Court, validity of.* A grant of Letters of Administration under s. 20 of Administrator-General's Act to the Administrator-General in respect of the estate of a deceased Hindu vests the estate in the Administrator-General and enables him to dispose of immovable property without the consent of the Court. The administration cannot be treated as closed until every act necessary for its completion has been done. Hence, a sale by the Administrator-General of some immovable property of the deceased, for the purpose of realising the commission due to him under the Act, is a valid sale in the course of administration and it takes precedence over a prior sale effected by the heir of the deceased. ALWAR CHETTY *v.* CHIDAMBARA MUDALI (1914) . **I. L. R. 38 Mad. 1134**

——— **ss. 28, 34 and 35**—*Civil Procedure Code (Act V of 1908), O. XX, r. 13—Suit to recover assets improperly paid by the Administrator-General—Not a suit for administration by Court—Priority of creditors—Construction of instrument of agreement—Creditor to be paid out of cheques or monies received from a third party for work done by the creditor—Charge on such cheques or monies received after Letters of Administration granted—"Specific fund," meaning of—Equitable assignment—"Payment out of a fund" and "Payment when a fund is received," difference between.* S. 28 of the Administrator-General's Act (II of 1874) directs the Administrator-General to distribute the assets and contains a provision that nothing contained in the section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively. When Probate or Letters of Administration have been granted to the Administrator-General there is no machinery for the administration of the insolvent estate of a deceased debtor under the law of insolvency. The practice in Bombay and Calcutta is the same as in Madras. O. XX, rule 13 of the Civil Procedure Code (Act V of 1908), does not apply to a suit brought by a creditor of a deceased debtor against the Administrator-General (to whom Letters of Administration had been granted) and some other creditors to recover assets alleged to have been improperly paid by the Administrator-General to such creditors in priority to the plaintiff. When an agreement contained a clause, *viz.*, "It is agreed that you should have a lien or charge over cheques or monies received for works done with your capital," the instrument operated to create a charge on cheques or monies payable for work done after the instrument, although the cheque was not given or payment made until after letters of administration had been granted to the Administrator General. *Collyer* v. *Isaacs, 19 Ch. D. 342*, and *Tailby* v. *Official Receiver, 13 A. C. 523*, followed. *Bhansidhar* v. *Sant Lal, I. L. R. 10 All. 133*, referred to. *Ex parte Nicholas In re James, 22 Ch. D. 782*, and *Ex parte Moss In re Toward, 14 Q. B. D. 310*, explained. When an instrument refers to specific funds out of which the claims of a creditor are to be satisfied, the creditor has a charge on such fund. When a creditor is to be paid "out of the fund" as distinguished from "when the assignor gets the fund," a valid equitable assignment is created provided the transaction is for value. Fisher on Mortgage, page 126, White and Tudor's Leading Cases, 8th Edition, Volume I, page 117. *Field* v. *Megaw, L. R. 4 C. P. 660*, distinguished. *Ramsidh Pande* v. *Balgobind, I. L. R. 9 All. 158*, referred to. NAVAJEE *v.* THE ADMINISTRATOR-GENERAL, MADRAS (1913) . . . **I. L. R. 38 Mad. 500**

ADMIRALTY COURT ACT, 1861 (24 VICT. C. 10).

——— **s. 5**—

See ARREST OF SHIP.
I. L. R. 42 Calc. 85

ADMIRALTY JURISDICTION.

See ARREST OF SHIP.
I. L. R. 42 Calc. 85

ADMISSION IN PLEADINGS.

See EVIDENCE ACT (I OF 1872), S. 92 AND PROV. (2). **I. L. R. 39 Bom. 399**

ADMISSION OF EXECUTION.

See MORTGAGE. **I. L. R. 37 All. 426**

ADOPTION.

See AGRA TENANCY ACT (II OF 1901), S. 22. **I. L. R. 37 All. 7**

See HINDU LAW—ADOPTION.

——— **by widow**—

See APPEAL TO PRIVY COUNCIL.
I. L. R. 38 Mad. 406

——— *Suit by reversioner to set aside adoption—Previous suit by adoptive mother, binding effect of—Civil Procedure Code (1908), section 11.* A Hindu widow as such brought a suit to set aside an adoption of a son made by her on the ground that she was not vested with authority from her husband to adopt. The suit was contested by the adopted son and it was decided by the Court in India, on the ground of estoppel. It was however *held* by the Privy Council that the adoption was valid and that the adoptive mother had authority from her husband to adopt.

ADMINISTRATOR-GENERAL'S ACT (II OF 1874)—*concld.*

——— **ss. 28, 34, 35**—*concld.*

ADOPTION—*concld.*

After the death of the widow, the present suit was brought by an alleged reversioner to the estate of her husband for a declaration that the adoption was invalid and for possession of the estate. *Held*, per BANERJI and CHAMIER, JJ. (RICHARDS, C.J., dissenting) that widow represented the estate and the interest of the reversioners to her husband, and as the Privy Council had held in the previous suit that the widow had full authority to make the adoption that decision was binding on the reversioners and the present suit was not maintainable. *Per* RICHARDS, C.J. (*contra*) the decision in the suit of the widow was not binding on the reversioners and the present suit was maintainable. RISAL SINGH *v.* BALWANT SINGH (1915) . . . . **I. L. R. 37 All. 496**

AD VALOREM COURT-FEE.

See DECLARATION, ETC.

I. L. R. 38 Mad. 922

ADVERSE ENJOYMENT.

See EASEMENTS ACT (V OF 1882), s. 15.

I. L. R. 38 Mad. 1

ADVERSE POSSESSION.

See BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862), s. 3.

I. L. R. 39 Bom. 358

See HEREDITARY OFFICES ACT (BOM. III OF 1874), s. 5.

I. L. R. 39 Bom. 587

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 4 AND 54.

I. L. R. 38 Mad. 1158

——— **against Government—**

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

——— *Right acquired by —Exproprietary tenant. Semble:* That although a leasehold or an exproprietary interest can be acquired by adverse possession as against the person who is the lessee or the exproprietary tenant, yet where there never has been a lessee or an exproprietary tenant it is not possible to become such by adverse possession. BASDEO *v.* ULFAT RAI (1914) . . . **I. L. R. 37 All. 22**

ADVERTISEMENT.

See TRADE MARK.

I. L. R. 37 All. 446

AGENCY.

See PAKKI ADAT TRANSACTIONS.

I. L. R. 39 Bom. 1

AGENT.

See TRADING WITH ENEMY.

19 C. W. N. 1239

——— **damages for negligence of—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 6 (*e*).

I. L. R. 38 Mad. 138

AGENT—*concld.*

——— **trading by—**

See TRADING WITH THE ENEMY.

I. L. R. 42 Calc. 1094

AGRA TENANCY ACT (II OF 1901).

——— **ss. 4, 19**—*Question of proprietary title—Jurisdiction—Civil and Revenue Courts —Res Judicata.* In a suit for ejectment in a Revenue Court (Assistant Collector) the defendants pleaded that the plaintiff "brought them from their villages and established them in the property promising that they should have the property in suit." The Revenue Court found that these were the true facts, and came to the conclusion that the defendants were "rent-free holders of the land in suit, which was given to them in gift by the plaintiff." The plaintiff appealed to the Commissioner, who confirmed the finding of the Assistant Collector. *Held*, that the plaintiff could not reopen in a Civil Court the question of the defendants' right to the land, inasmuch as the decision of the Assistant Collector had become final, no appeal having been made to the proper Court, namely, the District Judge. *Shahzade Singh* v. *Muhammad Mehdi Ali Khan, I. L. R. 32 All. 8. Bed Saran Kunwar* v. *Bhagat Deo, I. L. R. 33 All. 453*, and *Beni Pandey* v. *Raja Kausal Kishore, I. L. R. 29 All. 160*, referred to. SUNDAR KUNWAR *v.* DINA NATH (1915)

I. L. R. 37 All. 280

——— **s. 20, cl.** (*2*)—*Occupancy holding—Transfer—Mortgage executed before the Act came into force—Execution of decree.* A usufructuary mortgage of an occupancy holding executed before the coming into force of the Agra Tenancy Act, 1901, is a good mortgage. *Babu Lal* v. *Ram Kali, 3 All. L. J. 40*, and *Harbans Rai* v. *Sri Niwas Rao, 8 All. L. J. 1301*, followed. Where therefore, the mortgagee, not having obtained possession the judgment-debtor cannot set up s. 20 of the Act as a bar to its execution. RANG LAL KUNWAR *v.* KISHORI LAL (1915)

I. L. R. 37 All. 278

——— **s. 22—**

1. ——— *Occupancy holding —Succession—Hindu law.* One P, an occupancy tenant, died while the Rent Act of 1881 was in force leaving a widow and a daughter him surviving. The widow entered into possession and died after the present Tenancy Act had come into force. The present suit was brought by the brothers and nephews of P to eject the daughter and to get possession of the holding. *Held*, that the plaintiffs had no title either under s. 22 of the Agra Tenancy Act or under Hindu Law. NATHU *v.* GOKALIA (1915) . . **I. L. R. 37 All. 658**

2. ——— *Occupancy holding —Succession—"Lineal descendant"—Hindu law —Adoption. Held*, that, as regards the right of succession to an occupancy holding, a Hindu who has been adopted ceases to be the lineal descendant of his natural father for the purposes of s. 22 of the Agra Tenancy Act, 1901. *Lala* v. *Nahar*

AGRA TENANCY ACT (II OF 1901)—*contd.*

——— **s. 22**—*concld.*

Singh, I. L. R. 34 All. 358, followed. *Nandan Tewari* v. *Raj Kishore Rai*, Select Decisions, 1904, No. 5, approved. *Ali Bakhsh* v. *Barkat-ullah, I. L. R. 34 All. 419*, distinguished. THAMMAN SINGH *v.* DAL SINGH (1914) **I. L. R. 37 All. 7**

——— **s. 32**—*Suit for possession of portion of holding—Suit maintainable.* All that s. 32 of the Tenancy Act provides against is the splitting up of a holding or the distribution of the rent so as to bind the land-holders. Cl. 2 does no more than enact that a suit brought for such a purpose shall not be entertained by a Civil or Revenue Court; but where a plaintiff sues for possession of a portion of a fixed rate tenancy alleging that he is owner thereof and the defendant is a trespasser, such a suit is not barred by the provisions of s. 32 of the Agra Tenancy Act, 1901. *Najibullah* v. *Gulsher Khan, I. L. R. 29 All. 66*, followed. KEDAR *v.* DEO NARAIN (1915) **I. L. R. 37 All. 656**

——— **s. 95**—

1. ——— *Scope of section—Power to fix rent not given.* It was never intended that the Court in proceedings under s. 95 of the Agra Tenancy Act, 1901, was to fix the amount of rent. Under s. 95 it was intended that the Court should ascertain what in fact was the rent payable. RAM CHARAN LAL *v.* KARIM-UN-NISSA BIBI (1914) . . . **I. L. R. 37 All. 12**

2. ——— *Jurisdiction—Civil and Revenue Courts—Res judicata—Dispute between two rival claimants to a holding.* A sued B for ejectment in a Court of Revenue, alleging that B was his sub-tenant, and obtained a decree. B then sued in the Civil Court for a declaration that he was the owner of a certain occupancy holding and for possession if he was found not to be in possession. *Held* (*i*) that B's suit was properly triable by a Civil Court and not by a Court of Revenue and (*ii*) that the previous judgment of the Court of revenue ejecting B could not operate as *res judicata*. Neither was the suit barred by s. 95 of the Agra Tenancy Act, 1901. That section deals with questions arising between landlord and tenant, and not between rival claimants to a tenancy. *Jagannath* v. *Ajudhia Singh, I. L. R. 35 All. 14*, followed. *Diwan Singh* v. *Bandhera, 12 All. L. J.*, overruled. KANHAI RAM *v.* DURGA PRASAD (1915) . . **I. L. R. 37 All. 223**

——— **ss. 95, 167**—*Jurisdiction—Civil and Revenue Courts—Suit for ejectment of tenant—Decision of incidental question by Revenue Court—Suit in Civil Court with the object of defeating the Revenue Court's decree—Res judicata.* In a suit for ejectment of a tenant filed in a Court of Revenue the defendants pleaded that they held under an unexpired lease granted by the plaintiffs' *karinda*. The plaintiffs replied that the *karinda* had no authority to grant the lease. The Court of Revenue decided the issue thus raised in favour of the defendants and dismissed the suit. The

AGRA TENANCY ACT—(II OF 1901)—*contd.*

——— **s. 95**—*concld.*

plaintiffs then sued in a Civil Court asking for a declaration that the lease was without authority and was not binding on them. *Held*, that the suit would not lie. The Court of Revenue, in a suit the main object of which was the ejectment of the defendants, had jurisdiction to decide the question of the validity of the lease, and the suit was barred by the operation of ss. 95 and 167 of the Agra Tenancy Act, 1901. *Gomti Kunwar* v. *Gudri, I. L. R. 25 All. 138*, distinguished. *Rai Krishn Chand* v. *Mahadeo Singh, All. Weekly Notes, 1901, 49.* RAM SINGH *v.* GIRRAJ SINGH (1914) . . . **I. L. R. 37 All. 41**

——— **s. 97**—*Attestation of instrument by Revenue Court or Officer—Registration Act (XVI of 1908), s. 47. Held*, that where a lease has been attested by a Revenue Court or Officer under s. 97 of the Agra Tenancy Act, 1901, such attestation, in the same way as registration under the Indian Registration Act, relates back to the date of execution of the document. BANWARI LAL *v.* KHUBI RAM (1914) **I. L. R. 37 All. 59**

——— **s. 164**—*Suit by co-sharer against lambardar for share of profits—Burden of proof.* In a suit by a co-sharer against a lambardar for his share of profits under s. 164 of the Tenancy Act, if the co-sharer gives general evidence to show that the rents are greatly in arrear, that the tenants are solvent and that there are no special circumstances why the rents should not have been collected, the *onus* is shifted on to the defendant of showing that for some reason, not connected with his own negligence or misconduct, he was unable to collect the rents. *Mithan Lal* v. *Mizaji Lal, 10 All. L. J. 529*, followed. SHIVA CHANDAR SINGH *v.* RAM CHANDAR SINGH (1915) **I. L. R. 37 All. 595**

——— **s. 167**—*Jurisdiction—Civil and Revenue Courts—"Matter in respect of which a suit might have been brought" in the Revenue Courts.* The owners of certain zamindari property first mortgaged the property and then executed a perpetual lease of some land appertaining thereto. The mortgagees brought the zamindari to sale, and it was purchased by a stranger. The auction purchaser then sued the lessees in the Civil Court for recovery of possession of the land held by them. The lessees were directed to institute a suit in the Revenue Court to determine the question whether they were or were not tenants of the plaintiff. In this suit the auction purchaser admitted the existence of a tenancy, but pleaded that the precise nature of the tenancy, and in particular the validity of the perpetual lease was not a matter for determination *in that suit*. A decree was passed by the Revenue Court to the effect that the lessees were tenants of the plaintiff auction-purchaser. Subsequently the plaintiff amended his plaint by asking for a simple declaration that the perpetual lease was not binding on him. *Held*, that the suit so framed was barred by s. 167 of the

AGRA TENANCY ACT (II OF 1901)—*concld.*

——— **s. 167**—*concld.*

Agra Tenancy Act, 1901. The plaintiff might have instituted a suit for ejectment in the Revenue Court, in the course of which the validty of the perpetual lease would have to be determined. *Ram Singh* v. *Girraj Singh, I. L. R. 37 All. 41,* followed. SHER KHAN *v.* DEBI PRASAD (1915) **I. L. R. 37 All. 254**

——— **s. 197**—

See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), S. 22 (*3*). **I. L. R. 37 All. 232**

——— **s. 199**—*Suit for ejectment—Plea that defendant was holding under an unexpired lease—Question of proprietary title.* In a suit for ejectment in a Court of Revenue, the defendant pleaded that he was entitled to remain in possession under a certain zar-i-peshgi lease the term of which had not expired. The Court of Revenue treated the question thus raised as falling under s. 199 of the Agra Tenancy Act, 1901, and directed the defendant to file a suit in the Civil Court within three months to vindicate his right. *Held,* that s. 199 was not applicable and the defendant was not bound to file his suit in the Civil Court within three months from the date of the order of the Court of Revenue. SURAJ MAL *v.* HIRA KUNWAR (1914) **I. L. R. 37 All. 94**

AGREEMENT.

See ADMINISTRATOR-GENERAL'S ACT (II OF 1874), SS. 28, 34 AND 35. **I. L. R. 38 Mad. 500**

See HINDU LAW—ADOPTION. **I. L. R. 39 Bom. 528**

See LIMITATION. **I. L. R. 38 Mad. 101**

——— **appointing creditor agent for sale of debtor's goods**—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 31 **I. L. R. 37 All. 383**

AGREEMENT IN RESTRAINT OF TRADE.

See CONTRACT ACT (IX OF 1872), S. 27. **I. L. R. 37 All. 212**

AGREEMENT TO RECONVEY.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 39 Bom. 472**

AGRICULTURAL LANDS.

See UNDER-RAIYATI HOLDING. **I. L. R. 42 Calc. 751**

See WATERFLOW. **I. L. R. 38 Mad. 149**

AGRICULTURAL TRIBE.

See BUNDELKHAND ALIENATION ACT (II OF 1903), S. 3. **I. L. R. 37 All. 662**

AGRICULTURIST.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 2 AND 97. **I. L. R. 39 Bom. 422**

AHMEDABAD TALUQDARS ACT (BOM. VI OF 1862).

See KASBATIS . **I. L. R. 39 Bom. 625**

ALIENATION.

See ALIENATION BY WIDOW.

See CIVIL PROCEDURE CODE (1882). **I. L. R. 37 All. 542**

See HINDU LAW—ALIENATION.

See HINDU LAW—WILL. **I. L. R. 42 Calc. 561**

——— **by de facto guardian**—

See HINDU LAW—ADOPTION. **I. L. R. 38 Mad. 1105**

——— **by guardian**—

See LIMITATION ACT (XV OF 1877), SS. 7 AND 8. SCH. II, ART. 44. **I. L. R. 38 Mad. 118**

——— **by widow**—

See HINDU LAW—ALIENATION. **I. L. R. 42 Calc. 876**

See HINDU LAW—ALIENATION. **I. L. R. 37 All. 369**

See PRIVY COUNCIL. **I. L. R. 38 Mad. 509**

——— **of mutt properties**—

See MUTT, HEAD OF. **I. L. R. 38 Mad. 356**

——— **of vritti**—

See VRITTI. **I. L. R. 39 Bom. 26**

——— **restraint on**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10 **I. L. R. 38 Mad. 867**

ALIENEE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 63. **I. L. R. 38 Mad. 535**

——— **from trustee**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 92 AND 93. **I. L. R. 38 Mad. 1064**

——— **not a tenant in common**—

See HINDU LAW—JOINT FAMILY. **I. L. R. 38 Mad. 684**

ALLUVION.

See FISHERY **I. L. R. 42 Calc. 489**

ALTERATION.

See DEED **I. L. R. 38 Mad. 746**

AMBIGUITY.

See HINDU LAW—RELIGIOUS ENDOWMENT . . **I. L. R. 42 Calc. 536**

AMENDED LETTERS PATENT.

——— **cls. 11 and 26—**

See HIGH COURTS ACT (24 & 25 VICT. C. 104), SS. 2, 9 AND 13. **I. L. R. 39 Bom. 604**

AMENDMENT.

——— **of decree—**

See DECREE-HOLDER. **I. L. R. 38 Mad. 677**

ANCESTRAL MOVEABLE PROPERTY.

See HINDU LAW—WILL. **I. L. R. 39 Bom. 593**

ANCESTRAL PROPERTY.

See JOINT HINDU FAMILY. **I. L. R. 39 Bom. 245**

ANCIENT LIGHT.

——— **infringement of—**

See EASEMENT . **I. L. R. 42 Calc. 46**

ANNUITY.

See CHARGE . **I. L. R. 37 All. 72**

APPEAL.

See AWARD **I. L. R. 38 Mad. 256**

See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), SS. 21, 22. **I. L. R. 37 ALL. 76**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 24 . **I. L. R. 38 Mad. 25**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 97. **I. L. R. 39 Bom. 339, 421**

See CIVIL PROCEDURE CODE (1908), S. 105. **I. L. R. 37 All. 456**

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13 . . **I. L. R. 37 All. 208**

See CIVIL PROCEDURE CODE (1908), O. XLIII, R. 1 **I. L. R. 37 All. 272**

See CONTEMPT OF COURT. **I. L. R. 42 Calc. 1169**

See CRIMINAL PROCEDURE CODE, S. 193. **I. L. R. 37 All. 286**

See CRIMINAL PROCEDURE CODE, S. 408 (*b*). **I. L. R. 37 All. 471**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 3 (W), 10, 53. **I. L. R. 39 Bom. 165**

See LIMITATION ACT (IX OF 1908), S. 5. **I. L. R. 37 All. 267**

See MORTGAGE . **I. L. R. 38 Mad. 18**

See PENSIONS ACT (XXIII OF 1871), S. 6. **I. L. R. 39 Bom. 352**

APPEAL—*contd.*

See PROVINCIAL INSOLVENCY ACT (III OF 1907) . . **I. L. R. 38 Mad. 15**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S. 35. **I. L. R. 37 All. 450**

See RATEABLE DISTRIBUTION. **I. L. R. 42 Calc. 1**

See REVIEW . **I. L. R. 42 Calc. 830**

——— **in criminal cases—**

See PRIVY COUNCIL, PRACTICE OF. **I. L. R. 42 Calc. 739**

——— **revision of—**

See APPEAL TO PRIVY COUNCIL. **I. L. R. 38 Mad. 406**

——— **transfer of—**

See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), S. 22 (*3*). **I. L. R. 37 All. 232**

1. ——— *Additional Evidence—Civil Procedure Code (Act V of 1908) O. XLI, r. 27 ; O. XLVII, r. 1—Jurisdiction of Appellate Court to admit additional evidence—Application to admit additional evidence before the hearing of the appeal, if it can be entertained.* Where in an appeal an application was made before the hearing of the appeal for the admission of additional evidence : *Held*, that such an application was not warranted by the terms of O. XLI, r. 27, and the Appellate Court had no jurisdiction to entertain it. O. XLI, r. 27, does not authorise an Appellate Court to admit fresh evidence, documentary or oral, and whether or not it was in existence at the time of the judgment of the lower Court or at the time the appeal was preferred, unless the Appellate Court after examining the evidence on the record comes to the conclusion that it requires the additional evidence in order to enable it to pronounce judgment, namely, that there is a defect on the evidence on the record. An application to admit fresh evidence discovered out of Court by the parties comes under O. XLVII, r. 1, and not under O. XLI, r. 27. *Kessowji Issur* v. *Great Indian Peninsula Railway Co., I. L. R. 31 Bom. 381 ; L. R. 34 I. A. 115*, referred to. GARDEN REACH SPINNING AND MANUFACTURING CO. *v.* SECRETARY OF STATE FOR INDIA (1914) . . **I. L. R. 42 Calc. 675**

2. ——— *Criminal case—Practice—Duty of Appellate Court in dealing with the evidence on appeal—Proper standpoint—Conviction not to be upheld unless guilt beyond reasonable doubt affirmatively established—Criminal Procedure Code (Act V of 1898), s. 423.* In an appeal from a conviction it is for the Appellate Court, as it is for the first Court, to be satisfied affirmatively that the prosecution case is substantially true, and that the guilt of the appellant has been established beyond all reasonable doubt. To hold, that, unless reasonable ground is given to the Appellate Court for differing from the lower Court, the Appellate Court must accept its findings of fact, is to approach

APPEAL—*contd.*

the case from a wrong standpoint. KANCHAN MALLIK *v.* EMPEROR (1914)

I. L. R. 42 Calc. 374

3. ——— *Letters Patent 1865, s. 15—"Judgment"—Order by single Judge on Original Side directing defendant to give security—Civil Procedure Code (Act V of 1908), O. XXXVII, r. 2.* An order made by a single Judge sitting on the Original Side under O. XXXVII, r. 2 of the Code of Civil Procedure, directing a defendant to give security as a term on which leave to defend should be given, is not a "Judgment" within the meaning of s. 15 of the Letters Patent and is not appealable. *Justices of the Peace for Calcutta* v. *Oriental Gas Company, 8 B. L. R. 433,* followed. *Sonbai* v. *Ahmedbhai Habibhai, 9 Bom. H. C. 398,* referred to. SUKHLAL CHUNDERMULL *v.* EASTERN BANK, LD. (1915)

I. L. R. 42 Calc. 735

4. ——— *Practice—Filing of certified copy of decree appealed from after the prescribed period of limitation, without leave of the Court, effect of—Inherent power of High Court—Ex parte order in application for review of order of dismissal passed at preliminary hearing, setting aside of, at final hearing of appeal—Civil Procedure Code (Act V of 1908), s. 151, O. XLI, rr. 1, 11; O. XLVII, rr. 4, 7—Limitation Act (IX of 1908), s. 5.* Where a certified copy of the decree appealed from was filed in the High Court after the prescribed period of limitation without leave of the Court, in an analogous appeal, and where the main appeal had already been dismissed at the preliminary hearing under O. XLI, r. 11 of the Code of Civil Procedure, but was restored on review, without notice to the respondent after the aforesaid analogous appeal had been admitted by another Divisional Bench; at the final hearing of both these appeals on objection being taken by the respondent: *Held,* that the respondent was entitled to invoke the inherent powers of that Court. *Tikait Ajant Singh* v. *Christien, 17 C. W. N. 862,* followed. *Held,* also, that non-compliance with r. 4 of O. XLVII of the Code rendered the granting of an (*ex parte*) application for review (by the appellant) a nullity, as it was prejudicial to the respondent, and previous notice was necessary. *Held,* further, that under r. 1, O. XLI, of the Code, filing of the decree of the Appellate Court was imperative, and an appeal could not be said to have been preferred until that decree was filed. ABDUL HAKIM CHOWDHURY *v.* HEM CHANDRA DAS (1914) . **I. L. R. 42 Calc. 433**

5. ——— *Suit to wind up partnership and for accounts—Preliminary decree referring suit to Assistant Referee—Question of disputed membership of firm—Report of Referee confirmed by final decree of Trial Judge—Omission to appeal from preliminary decree—Appeal from final decree raising question whether inquiry was rightly referred to Referee—Civil Procedure Code (Act V of 1908), s. 97—Interest, liability for, of partner of firm after dissolution using assets of firm for business for his own benefit.* In a suit to wind up a partnership

APPEAL—*concld.*

and to have accounts taken, the membership of the firm was in dispute, certain persons being by the plaintiff alleged to be partners, and by the defendants to have been only employees remunerated by a share of the profits. An adjudication was made by the Trial Judge which declared that the partnership was dissolved as from 1st July 1907, and then "ordered and decreed" that "it is referred to the Assistant Referee of this Court to take the following account and make the following enquiries, that is to say, (*a*) to enquire who were the partners entitled to share in the assets and goodwill of the partnership business, (*b*) to take an account of the dealings of the parties with the assets of the partnership business." From that adjudication, though it was appealable, the appellants did not appeal. The Referee made the enquiries directed and took the account. His report as to enquiry (*a*) was adverse to the appellants, was excepted to by them, and was confirmed by the Trial Judge in his final decree. On an appeal by the appellants raising the question whether inquiry (*a*) was rightly included in the first adjudication, or whether it was not one which should have been made by the Court itself:—*Held* (affirming the decision of the Courts below), that the first adjudication of the Trial Judge which included inquiry (*a*) was a preliminary decree under s. 97 of the Civil Procedure Code, 1908, and that the appellants not having preferred an appeal from it could not question it on appeal from the final decree. Where, on the dissolution of a partnership, one of the partners retains assets of the firm in his hands without any settlement of account, and applies them in containing the business for his own benefit, he may be ordered to account for such assets with interest thereon, apart from fraud or misconduct in the nature of fraud. AHMED MUSAJI SALEJI *v.* HASHIM EBRAHIM SALEJI (1915)

I. L. R. 42 Calc. 914

APPEAL TO PRIVY COUNCIL.

See CIVIL PROCEDURE CODE (1908), S. 199 (*c*) . . **I. L. R. 37 All. 129**

See LEAVE TO APPEAL TO PRIVY COUNCIL.

1. ——— *Death of plaintiff—Appellant—Suit to set aside adoption by widow as invalid and as affecting reversionary interest of plaintiff—Right of contingent reversioners to be joined as plaintiffs in presumptive reversioner's suit—Civil Procedure Code (Act V of 1908), O. I, r. 1—Suit to set aside alienation by widow—Revivor of appeal—Substitution of parties on record—Survival of right to sue.* The appellant brought a suit against the respondents to set aside the adoption of the second respondent by the first respondent as being illegal and invalid under the Hindu Law, and for a declaration that it did not affect his interest in the ancestral estate of one *V* of whom he claimed to be the nearest reversionary heir. The suit was dismissed by both Courts in India, and the appellant filed an appeal to His Majesty in Council, pending which he died. In an application by his grandson as the sole surviving member of his grandfather's family, and also on his death the next

APPEAL TO PRIVY COUNCIL—*concld.*

reversionary heir to the estate of *V* for an order that his name be substituted on the record for that of the appellant, and that the appeal be revived: *Held*, that the petitioner was entitled to the order asked for under O. I, r. 1 of the Civil Procedure Code (Act V of 1908) which declares the persons who may be jointed in one suit as plaintiffs. A suit to set aside an adoption is brought by the presumptive reversioner in a representative capacity and on behalf of all the reversioners. The act complained of is to their common detriment, just as the relief sought for is for their common benefit. Under the above rule the contingent reversioner may be joined as plaintiff in the presumptive reversioner's suit, and, if so, it follows that on his death the "next presumable reversioner" is entitled to continue the suit begun by him. The two kinds of suits which the Indian law permits to be brought in the life-time of a female owner by reversioners for a declaration that an adoption made by her is invalid, or an alienation effected by her is not binding against the inheritance [see articles 118 and 125 of schedule I of the Limitation Act (IX of 1908)], although they differ in character, will be found to be the same in both instances as regards the position of the plaintiffs so far as the point for decision is concerned; and the test of *res judicata* is irrelevant to the inquiry whether the contingent reversioner is entitled to continue the suit commenced by the presumptive reversioner. It is the common injury to the reversioners which entitles them to sue, and the question is whether the "right to sue survives" apart from any consideration whether or not the next presumable heir is the "legal representative" of the deceased presumptive reversioner. VENKATANARAYANA PILLAI *v.* SUBBAMMAL (1915)

I. L. R. 38 Mad. 406

2. ——— *maintainability of—Civil Procedure Code (Act V of 1908), s. 109—Orders remanding, not final orders so as to be appealable to Privy Council—Civil Procedure Code (Act V of 1908), s. 105.* Orders of the High Court reversing on appeal two decisions of the lower Court, and remanding the cases for trial, either on the ground that the lower Court was wrong in dismissing the suit for insufficiency of the pleadings, and the other on the ground that the lower Court was wrong in dismissing the suit on the plea of bar contained in s. 43 of the old Civil Procedure Code, are purely preliminary or interlocutory orders, which do not decide the respective rights of the parties, and are not *final* orders within the meaning of s. 109, Civil Procedure Code, so as to be capable of being appealed against to the Privy Council. *Tirunarayana* v. *Gopalasami, I. L. R. 13 Mad. 349*, followed. *Saiyid Muzhar Hossein* v. *Bodha Bibi, I. L. R. 17 All. 112*, applied. *Forbes* v. *Ameeroonissa Begum, 10 Moo. I. A. 340, 359*, referred to. S. 105, Civil Procedure Code, does not apply to appeals to His Majesty in Council. VENKATARANGA ROW *v.* NARASIMHA RAO (1913)

I. L. R. 38 Mad. 509

APPEARANCE.

——— **bond for—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 90, 501 AND 507.

I. L. R. 38 Mad. 1088

APPELLATE COURT.

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 1 . **I. L. R. 37 All. 326**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 27, CL. (*b*).

I. L. R. 38 Mad. 414

——— **jurisdiction of—**

See ADDITIONAL EVIDENCE.

I. L. R. 42 Calc. 675

——— **power of—**

See COSTS . **I. L. R. 42 Calc. 451**

See CRIMINAL PROCEDURE CODE, S. 195, CL. (*6*) . . **I. L. R. 37 All. 439**

——— *Discretion of Appellate Court in the consideration of evidence—Interference with findings of fact of Judge who sees and hears the witnesses, rule as to—Pronouncement of Trial Judge as to credibility of witnesses not to be set aside on a mere calculation of probabilities by Court of Appeal—Relevancy of cross-examination to credit—Trial Judge's opinion on evidence upheld.* Whilst it is doubtless true that on appeal the whole case, including the facts, is within the jurisdiction of the Appellate Court, it is, generally speaking, undesirable to interfere with the findings of fact of the Trial Judge who sees and hears the witnesses, and has the opportunity of noting their demeanour, especially in cases where the issue is simple, and depends on the credit which attaches to one or other of conflicting witnesses. Nor should the pronouncement of the Trial Judge with respect to their credibility be put aside on a mere calculation of probabilities by the Court of Appeal. In making these observations, their Lordships said they had no desire to restrict the discretion of the Appellate Courts in India in the consideration of evidence. They only wished to point out that where the issue is simple and straightforward, and the only question is which set of witnesses is to be believed, the verdict of a Judge trying the case should not be lightly disregarded. Cross-examination to credit is necessarily irrelevant to any issue in the action; its relevancy consists in being addressed to the credit or discredit of the witness in the box so as to show that his evidence for or against the relevant issue is untrustworthy. "It is most relevant in a case," their Lordships said, "like the present where everything depends on the Judge's belief or disbelief in the witness's story: and to excuse him and actually accept his story on the ground that he was uncomfortable when he was shown to be a fraudulent falsifier of accounts is to adopt a course which their Lordships cannot follow." On the evidence in the case their Lordships reversed the decision of the Appellate Court and upheld that of the Trial Judge. BOMBAY

APPELLATE COURT—*concld.*

COTTON MANUFACTURING COMPANY *v.* MOTILAL SHIVLAL (1915) . . **I. L. R. 39 Bom. 386**

APPELLATE DECREE.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192 . **I. L. R. 38 Mad. 655**

APPLICATION FOR LEAVE TO APPEAL.

See LEAVE TO APPEAL TO PRIVY COUNCIL. **I. L. R. 42 Calc. 35**

APPOINTMENT.

——— **power of—**

See HINDU LAW—WILL. **I. L. R. 42 Calc. 561**

See LESSOR AND LESSEE. **I. L. R. 38 Mad. 86**

APPROPRIATION OF PAYMENTS.

See CONTRACT ACT (IX OF 1872), SS. 59—61 . . **I. L. R. 37 All. 649**

APPROVER.

See CRIMINAL PROCEDURE CODE, S. 337. **19 C. W. N. 179, 295**

See PARDON . **I. L. R. 42 Calc. 856**

ARBITRATION.

See CIVIL PROCEDURE CODE (1908), S. 105. **I. L. R. 37 All. 456**

See COMPANIES ACT (VI OF 1882), SS. 76, 96 AND 123 . **I. L. R. 37 All. 273**

1. ——— *Bengal Chamber of Commerce, arbitration by—Arbitration Act (IX of 1899), s. 14—Arbitration clause in a contract—Reference to an Association—Rules of an Association for the conduct of arbitration proceedings referred to it, whether imported into the contract and binding on the parties thereto.* Where a contract contains an arbitration clause by which it is agreed that any dispute arising out of the contract shall be referred to the arbitration of the Bengal Chamber of Commerce, the rules of the Association are imported into the contract and are binding on the parties. *Per* JENKINS, C.J. The decision in *Ganges Manufacturing Company, Ld.* v. *Indra Chand, I. L. R. 33 Calc. 1169,* was binding on the learned Judge (of the Court of first instance) and should have been followed by him. CHAITRAM RAMBILAS *v.* BRIDHICHAND KESRICHAND (1915)

I. L. R. 42 Calc. 1140

2. ——— *Award — Private award by arbitrators—Order of Court to file award—Appeal if competent after decree drawn up—Decree if subsists after order set aside—Capacity to refer—Executors if may refer question of construction of will—Arbitrators if may be empowered to alter will—Award so altered if valid—One party to reference if may object to legality—Estoppel—Award affecting persons not parties to reference, if enforcible.* The right to appeal against an order directing to be filed an award made by arbitrators without the intervention of the Court is not lost as soon as a decree is drawn up in accordance with the judgment pronounced on the basis of the award. The order does not merge in the decree. It is competent to a Court setting aside an order directing an award to be filed to declare that the decree based on the award has been vacated because the order on which it was based has been cancelled: *Kshetra Nath* v. *Ushabala, 18 C. W. N. 381.* Submission to arbitration is a contract; and the parties thereto must not only have a general legal capacity to contract, but they must also have such power in relation to the subject-matter of the submission as will enable them to carry into effect any order which could be legally and properly laid upon them by the award. Where a party's capacity to contract is restricted, the power of making a submission is in the same manner and to the same extent limited. An executor cannot make a reference to arbitration with the avowed purpose that the terms of the will may be modified and arrangements made for the management and distribution of the estate contrary to the directions of the testator. Questions of law including questions as to construction of a will may be validly referred to arbitrators. But they cannot add to, or alter, the terms of the will. A Court will not enforce an award to the detriment of persons not parties to the reference. One of the parties to a reference may take exception to the legality of the award. Submission to an arbitrator does not operate as a waiver of an extrinsic objection that the award is illegal because based on an illegal act or subject-matter. SOUDAMINI GHOSH *v.* GOPAL CHANDRA GHOSH (1914)

19 C. W. N. 948

3. ——— *Order of reference authorising arbitrator to extend time made by consent of parties—Arbitrator extending time after the period originally fixed by Court had expired—Arbitrator after such time, if functus officio—Award submitted within such extended time, if must be set aside—Arbitrator's interest in subject-matter in suit, when insignificant and unknown to him, if would invalidate award.* Where an order of reference to an arbitrator under Sch. II of the Code of Civil Procedure (Act V of 1908) fixed three months time for the submission of the award to Court and also empowered the arbitrator to extend the time for such submission from time to time by endorsement in the office copy of the order: *Held,* that when the Court had made the order by consent of the parties, there could be no objection to the functions of the Court with regard to the enlargement of time being delegated to the arbitrator if the parties so desired. But the arbitrator can only extend the time in such cases, before the time originally fixed for making the award had expired. If he did not do so, he was by reason of effluxion of time *functus officio* and had no further jurisdiction in the matter. As in this case the arbitrator had extended the time after the three months originally fixed by Court had expired, the award must be set aside, although it was submitted within the time so extended by the arbitrator. If an arbitrator, unknown to one of the

ARBITRATION—*concld.*

parties, has a personal interest in the subject-matter of the award, it would be improper that he should act as arbitrator. If, however, his interest is insignificant and unknown to himself so that it is impossible that it could have influenced his award in any way, the Court would not be disposed to set aside the award. CO-OPERATIVE HINDUSTHAN BANK, LD. *v.* BHOLA NATH BOROOAH (1914)
19 C. W. N. 165

4. ——— *Private award in excess of reference and contrary to law on one point, but valid as to rest—Invalid portion separable from valid—Court, if may accept valid portion and pass a decree on it—Award not enforcible summarily but operative as contract.* Where the matter has been referred to arbitration without the intervention of the Court, under para. 21 of Sch. II of the Civil Procedure Code, the Court cannot proceed to file the award when any of the grounds mentioned in paras. 14 and 15 of the same Schedule is proved. Even when the portion of the award open to exception is separable from the rest, the Court cannot proceed to give effect to the portion which is valid in a summary proceeding under para. 21 of Sch. II of the Civil Procedure Code. The mere fact, however, that the award cannot be filed will not affect the validity of this portion of the award as a contract between the parties. A mistake of law on a legal point specifically referred to the arbitrators would not vitiate their award, but a decision on a question of succession not referred to them and patently contrary to law cannot be accepted by the Court. DINABANDHU JANA *v.* CHINTAMONI JANA (1914) . . . **19 C. W. N. 476**

ARBITRATION ACT (IX OF 1899).

——— **s. 14—**

See ARBITRATION.
I. L. R. 42 Calc. 1140

ARCHAKA.

——— **office of, alienation of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 850

ARMS.

——— **joint possession of—**

See MISJOINDER OF CHARGES.
I. L. R. 42 Calc. 1153

ARMS ACT (XI OF 1878).

——— **ss. 4, 5, 14, 19(*a*), (*f*), 20—**

See MISJOINDER OF CHARGES.
I. L. R. 42 Calc. 1153

ARREST OF SHIP.

——— *Trespass—Absence of Notice—Cause of action—Admiralty jurisdiction—Letters Patent, 1865, cl. 32—Letters Patent, 1862, cl. 31—Charter of the Supreme Court, 1774, cl. 26—Admiralty Court Act, 1840 (3 & 4 Vict. c. 65)—Admiralty Court Act, 1861 (24 Vict. c. 10), s. 5—Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), ss. 2 (3) (a), 35—Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 18 (2)—Maritime necessaries—Action in rem—Wrongful seizure—Limitation Act (IX of 1908), Sch. I, Arts. 29, 36, 49—Pleadings.* On the 4th June 1910, the respondent company instituted a suit *in rem* against the *Clan Mackintosh* in this Court as a Colonial Court of Admiralty for an amount alleged to be due to them for maritime necessaries, and obtained a warrant of arrest. The ship was arrested on the same day, and remained under arrest until her release on the 31st January 1912, the action having been dismissed two days earlier on the ground of absence of jurisdiction. The owners of the ship were the appellant company, who had their office in Burma. On the 14th June 1912, the appellant company instituted the present suit in the ordinary original civil jurisdiction of this Court against the respondent company for the wrongful arrest of the ship. The suit as framed was based on malice or its equivalent, but at the hearing the appellant company proceeded on the footing of the suit being one for mere trespass. *Held*, that in the absence of proof of malice or its equivalent, a suit for simple trespass will not lie for the arrest of a ship. *The Walter D. Wallet*, [*1893*] *P. 202*, *Xenos* v. *Aldersley*. *The Evangelismos*, *12 Moo. P. C. 352*, and *The Strathnaver*, *L. R. 1 A. C. 58*, referred to. The arrestment of the ship was a judicial act of the Court, and an ordinary step in an action *in rem*. Under the arrest, the custody and possession was with the Marshal as an officer of the Court and could not be regarded as a detention by the respondent company. The damage, if any, suffered from the continuance of the officer's custody, and possession was due not to the default of the respondent company but to the law's delay. *Peruvian Guano Co.* v. *Dreyfus*, [*1892*] *A. C. 166*, followed. The foundation of the Admiralty jurisdiction of the High Court, more especially in respect of maritime necessaries discussed. *The "Two Ellens,"* *L. R. 4 P. C. 161*, *The Henrich Bjorn*, *L. R. 11 A. C. 270*, *Murray* v. *Longford*, *1 Fulton 95*, *The Asia*, *5 Bom. H. C. (O. C.) 64*, *The Portugal*, *6 B. L. R. 323*, *Bardot* v. *The Augusta*, *10 Bom. H. C. 110*, referred to. Assuming that the High Court in its Admiralty jurisdiction did not acquire jurisdiction over maritime necessaries by any previous enactment, such jurisdiction would now rest on the Colonial Courts of Admiralty Act, 1890, which vests in it the powers described in s. 5 of the Admiralty Act, 1861. To oust the jurisdiction of this Court under s. 5, it is not enough that the owners of the ship should be in fact domiciled in India or Burma; this domicile has to be proved to the satisfaction of the Court. *Ex parte Michael*, *L. R. 7 Q. B. 658*, followed. Inasmuch as such proof was not produced before the Court, when the order for arrest was made, the order for arrest cannot be treated as *coram non judice* or a nullity. Assuming that an action would lie in the absence of proof of malice or its equivalent, the action would be for wrongful seizure under legal process and would be barred by Art. 29 of the Limitation Act. It is imperative under O. VII, r. 1 (*e*) of the

ARREST OF SHIP—*concld.*

Code of Civil Procedure that a plaint should contain "the facts constituting the cause of action and *when it arose.* MADRAS STEAM NAVIGATION CO., LD. *v.* SHALIMAR WORKS, LD. (1914) **I. L. R. 42 Calc. 85**

ASSAM LAND AND REVENUE REGULATION (II OF 1889).

——— *s. 154, if bars suit for declaration of title and possession by co-sharer.* S. 154 of the Assam Land and Revenue Regulation which provides that no Civil Court shall exercise jurisdiction in the distribution of land or allotment of revenue on partition is no bar to an unrecorded co-sharer, who was not allowed to intervene in partition proceedings before the Revenue authorities, instituting a suit for a declaration of his title to a share of the estate and for confirmation of possession, when the partition proceedings before the Revenue authorities had not yet been completed. HABIRAM DAS *v.* HEM NATH SARMA (1915) **19 C. W. N. 1068**

ASSAULT.

See CRIMINAL PROCEDURE CODE, SS. 345 AND 439 . **I. L. R. 37 All. 419**

See MISJOINDER. **I. L. R. 42 Calc. 760**

See PENAL CODE (ACT XLV OF 1860), SS. 332, 323 . **I. L. R. 37 All. 353**

ASSESSMENT.

See CHAUKIDARI CHAKRAN LANDS. **I. L. R. 42 Calc. 710**

See PENAL ASSESSMENT.

ASSETS.

See ADMINISTRATOR-GENERAL'S ACT (II OF 1874), SS. 28, 34, 35. **I. L. R. 38 Mad. 500**

ASSIGNEE.

See ASSIGNEE OF A MONEY-DECREE OF THE ORIGINAL COURT . **I. L. R. 38 Mad. 36**

——— **of promissory note—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 130 AND 134. **I. L. R. 38 Mad. 297**

——— **right of, to apportionment—**

See LESSOR AND LESSEE. **I. L. R. 38 Mad. 86**

ASSIGNEE OF A MONEY-DECREE OF THE ORIGINAL COURT.

——— *Decree reversed in appeal—Assignee not a party to the appeal—Money realised by assignee in execution—Application by judgment-debtor for restitution—Objection by assignee to application—Suit by judgment-debtor against assignee—Fraud and collusion between judgment-debtor and original decree-holder, effect of—Civil Procedure Code (Act XIV of 1882), s. 583—Lis pendens.* A judgment-debtor, from whom the assignee of a money-decree has realised the decretal amount

ASSIGNEE OF A MONEY-DECREE OF THE ORIGINAL COURT—*concld.*

in execution, is entitled to recover it back from him when the decree is afterwards reversed in appeal even if the assignee of the original decree was not brought on the record in the appeal. Neither the fact that the assignment was made before the appeal was filed, nor the fact that the judgment-debtor had knowledge of the assignment before he lodged his appeal, makes any difference. Where the decree of the Appellate Court was the result of fraud and collusion between the judgment-debtor and the original decree-holder, it is possible that such a plea if made and proved would be a sufficient answer to a suit by the judgment-debtor against the assignee of the decree. Money obtained under an invalid process of Court must be treated as money had and received to the use of the person from whom it was realised. A suit for restitution by the judgment-debtor was maintainable, where he had sought his remedy for restitution by an application made to the Court which executed the decree and it was on the objection of the defendant (assignee of the decree) that he was driven to institute the suit; the defendant cannot now be heard to say that the procedure to which he himself successfully objected was the proper procedure. *Settappa Goundan* v. *Muthia Goundan, I. L. R. 31 Mad. 268*, and *Doraiswami Ayyar* v. *Annaswami Ayyar, I. L. R. 23 Mad. 306*, followed. *Tangi Joghi* v. *Hall, I. L. R. 33 Mad. 203*, referred to. *Lalta Prasad* v. *Sadiq Husen, I. L. R. 24 All. 288*, dissented from. GOVINDAPPA *v.* HANUMANTHAPPA (1912) . . . . **I. L. R. 38 Mad. 36**

ASSIGNMENT.

See DEBT. **I. L. R. 42 Calc. 849**

See EQUITABLE ASSIGNMENT.

See TRADE MARK. **I. L. R. 42 Calc. 262**

——— **by lessee—**

See LESSOR AND LESSEE. **I. L. R. 38 Mad. 86**

——— **founded on tort—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 6 (*e*) **I. L. R. 38 Mad. 138**

ASSISTANT COLLECTOR.

——— **jurisdiction of—**

See CIVIL PROCEDURE CODE (1908), SS. 68 AND 70, SCH. III. **I. L. R. 37 All. 334**

ASSISTANT JUDGE.

See BOMBAY CIVIL COURTS ACT (XIV OF 1869), S. 16 . **I. L. R. 37 All. 136**

ASSISTANT SESSIONS JUDGE.

See CRIMINAL PROCEDURE CODE, S. 408(*b*). **I. L. R. 37 All. 471**

ATTACHMENT.

See ATTACHMENT OF DEBT.

ATTACHMENT—*concld.*

See CO-OPERATIVE SOCIETY.
I. L. R. 42 Calc. 377

See INSOLVENCY.
I. L. R. 42 Calc. 72, 289

——— **effect of**—

See CIVIL PROCEDURE CODE (1908), S. 73; O. XXXVIII, RR. 5, 8 AND 10; O. XXI, RR. 52 AND 63.
I. L. R. 37 All. 575

——— **withdrawal of**—

See CIVIL PROCEDURE CODE (1882).
I. L. R. 37 All. 542

——— *If creates lien or title.* It is well settled that attachment creates no charge or lien upon the attached property: it merely prevents private alienation. It does not confer any title on the attaching creditor. MOHIUDDIN *v.* PIRTHICHAND LAL CHOUDHURY (1914)
19 C. W. N. 1159

ATTACHMENT OF DEBT.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 29, 62 AND 120.
I. L. R. 38 Mad. 972

ATTESTATION.

See TRANSFER OF PROPERTY ACT (IV OF 1882) . . **I. L. R. 37 All. 474**

——— **by mortgagor**—

See MORTGAGE BY MINOR.
I. L. R. 38 Mad. 1071

——— **of instrument**—

See AGRA TENANCY ACT (II OF 1901), S. 97 . . **I. L. R. 37 All. 59**

——— **of instrument**—

——— *Witness how far affected with knowledge of contents.* The mere attestation of an instrument by a person does not necessarily import concurrence by him in the transaction evidenced thereby. *Raj Lukhee Dabia* v. *Gakool Chunder Chowdhry, 13 Moo. I. A. 209*, referred to. The question whether attestation of document should be held to imply assent is a question of fact and must be determined with reference to the circumstances of each case and the High Court cannot entertain it in second appeal. *Deno Nath Das* v. *Kotiswar Bhattacharya, 21 Indian Cases 367*, and *Mewa Singh* v. *Bhagwant Singh, 5 Indian Cases 252*, referred to. LAKHPATI *v.* RAMBODH SINGH (1915) . . . . **I. L. R. 37 All. 350**

ATTESTATION AND RATIFICATION.

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS 120 AND 125.
I. L. R. 38 Mad. 396

AUCTION-PURCHASER.

——— **fraud of**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.
I. L. R. 38 Mad. 1076

AUCTION-PURCHASER—*concld.*

——— **rights of, before and after confirmation of sale**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 66.
I. L. R. 38 Mad. 387

AUCTION SALE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89.
I. L. R. 38 Mad. 775

AUTREFOIS ACQUIT.

——— *Charge framed—Further inquiry ordered—Criminal Procedure Code (Act V of 1898), ss. 253 (2), 350 and 437.* Where a Magistrate framed charges against an accused person and was succeeded by another Magistrate who recommenced the case under s. 350, Criminal Procedure Code, and upon examining the complainant, discharged the accused under s. 253 (2), Criminal Procedure Code: *Held*, that the accused was *autrefois acquit* and that no further inquiry could be held into the case. *Per* AYLING, J.—Where the proceedings recommenced under s. 350 are only an inquiry, they are recommenced as an inquiry; where they have developed into the trial stage they are recommenced as a trial, *i.e.*, proceedings in which a charge has been framed. The second Magistrate cannot ignore the charge framed by his predecessor; his order must be viewed as one of acquittal. SRIRAMULU *v.* VEERASALINGAM (1914)
I. L. R. 38 Mad. 585

AWARD.

——— *Judgment and decree in accordance with award—Appeal—Civil Procedure Code (Act V of 1908), Sch. II, cls. 15 and 16—Revision, non-maintainability of—Civil Procedure Code (Act V of 1908), s. 115, no formal petition necessary for revision under.* No appeal lies from a decree which is in accordance with an award except upon grounds mentioned in clause 16 (2) of the second schedule to the Civil Procedure Code (Act V of 1908). This was also the law under the old Civil Procedure Code (Act XIV of 1882) and it is *a fortiori* under the new Civil Procedure Code according to which an application could be made under clause 15 (c) to set aside an award on the new ground, *viz.*, "the award being rather invalid." *Suryanarayana Rao* v. *Sarabhaiah, 21 Mad. L. J. 263*, followed. *Kanakku Nagalinga Naik* v. *Nagalinga Naik, I. L. R. 32 Mad. 510*, referred to. When an application is made to set aside an award but refused and a judgment is pronounced according to the award, the judgment so pronounced is final under clause 16 (2). A revision petition to set aside an award is more objectionable than an appeal. *Ghulam Khan* v. *Muhammad Hassan, I. L. R. 29 Calc. 167*, followed. *Velu Pillai* v. *Appasami Pandaram, 1 Mad. W. N. 141*, distinguished. *Obiter*: If an application is made to set aside an award but refused, it would be open to the Court to pronounce judgment even though the ten days allowed for such an application had not expired. The words

AWARD—*concld.*

"after the time for making such application had expired" apply only where there has been no application made to set aside the award. If the application is made after the period of limitation, *viz.*, ten days, the Court can refuse to set aside the award. A formal application for revision under s. 115, Civil Procedure Code, is not necessary BATCHA SAHIB *v.* ABDUL GUNNY (1913)

I. L. R. 38 Mad. 256

B

BABUANA GRANT.

See HINDU LAW—CUSTOM.

I. L. R. 42 Calc. 582

BAIL.

——— *Grounds of admission to bail—Confession of a co-prisoner materially corroborated as to applicant—Relative powers of the High Court and Subordinate Courts to grant bail—Criminal Procedure Code (Act V of 1898), ss. 497 and 498.* S. 497 of the Criminal Procedure Code contains a rule founded on justice and equity, and should be followed by the High Court, unless anything appears to the contrary. The extended powers given to the latter by s. 498 are not to be used to get rid of the reasonable and proper provision of the law laid down in s. 497. The High Court refused bail where a confession by a co-accused implicating himself and the petitioners was materially corroborated as to the latter by other evidence taken at the preliminary enquiry into offences under ss. 307 and 337 of the Penal Code. ASHRAF ALI *v.* EMPEROR (1914)

I. L. R. 42 Calc. 25

BAILIFF.

——— *Writ or warrant authorising him to give possession of immoveable property—Use by bailiff of reasonable degree of force to effect removal of person refusing to vacate—Practice of bailiffs taking strangers as assistants—Time of delivery of writ of possession for execution—Piecemeal trial of lengthy cases by Magistrates—Penal Code (Act XLV of 1860), s. 323—Presidency Small Cause Courts Act (XV of 1882), ss. 43, 48—Civil Procedure Code (Act V of 1908) O. XXI, rr. 35, 97 and First Schedule, App. E., Form No. 11—Practice.* A bailiff of the Presidency Small Cause Court in the execution of a writ, issued under s. 43 of the Presidency Small Cause Courts Act, requiring or authorizing him "to give possession" of certain premises to the applicant, may use a reasonable degree of force in order to effect the removal of persons bound by the decree and refusing to vacate the same, notwithstanding the omission in the writ of words expressly authorizing their removal. *Quœre*: Whether the English Common Law or the Civil Procedure Code applies to the writ or warrant in question. In a writ of possession under the former, words expressly authorizing forcible removal are

BAILIFF—*concld.*

not inserted, but an order "to give possession" authorizes such removal if need be: and, if the Code applies, the omission of such words is immaterial. O. XXI, r. 97 of the Civil Procedure Code merely provides an additional or alternative remedy. Where the bailiff proceeded to the premises, and on the occupant's wife refusing to vacate, pulled or dragged her out of the house, and the force used for the purpose caused her, when released, to fall on the ground whereby she received slight injuries: *Held*, that he was legally justified in the employment of such amount of force, and could not be convicted therefor under s. 323 of the Penal Code. In such cases it is impossible to calculate or apply with the utmost nicety the degree of force necessary and yet not more than sufficient. Observations as to the practice of bailiffs taking with them as assistants persons unconnected with the Court, and as to the time of delivery to them of writs for execution. Piecemeal conduct of trials by Magistrates condemned. MEREDITH *v.* SANJIBANI DASI (1914)

I. L. R. 42 Calc. 313

BAIRAGI.

See HINDU LAW—SUCCESSION.

I. L. R. 39 Bom. 168

BANDHU.

See HINDU LAW—BANDHUS.

I. L. R. 37 All. 583

See HINDU LAW—INHERITANCE.

I. L. R. 42 Calc. 384

BANDSMAN.

See WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859).

I. L. R. 38 Mad. 551

BANK.

——— **advance of loan by—**

See STAMP ACT (II OF 1899), s. 57.

I. L. R. 38 Mad. 349

——— **promissory note executed to—**

See STAMP ACT (II OF 1899), s. 57.

I. L. R. 38 Mad. 349

BANKRUPTCY ACT, 1883 (46 & 47 VICT. C. 52).

——— **ss. 33, 102—**

See MINOR . **I. L. R. 42 Calc. 225**

——— **s. 40—**

See INSOLVENCY **I. L. R. 42 Calc. 289**

BARKI SERVICE.

——— **grant for—**

See GRANT . **I. L. R. 39 Bom. 68**

BARODA-COURT DECREE—

See DECREE . **I. L. R. 39 Bom. 34**

BARRISTER.

See LIMITATION ACT (IX OF 1908), s. 5.

I. L. R. 37 All. 267

BENAMI TRANSACTION.

——————— *Hindu with wives and a Muhammadan mistress—Purchase with his own funds in name of mistress and registration of deed in her name—Property treated as his own, and no possession or use of it by mistress—Landlord and tenant—Estoppel as to denial of title by tenant—Evidence Act (I of 1872), s. 116—No inference against litigant as to contents of documents he considers irrelevant—Omission of opposing litigant to put them in evidence in proper way.* A Hindu taluqdar who had two wives and a Muhammadan mistress and had already made substantial provision for the latter, purchased a house with his own money in the name of the mistress, and registered the deed also in her name. He treated the house, however, as his own during his life-time, living in it, paying for repairs and taxes, and receiving rent for it when let, as did his senior widow after his death; and the mistress had no possession or use of the house. In a suit by the senior widow to eject, after due notice to quit, a tenant to whom she had let the house, whose defence was a denial of the plaintiff's title, and an assertion that he held under the Muhammadan mistress who claimed title under the deed of sale in her name of which she had obtained possession. *Held* (reversing the decision of the High Court and restoring that of the Subordinate Judge), that on the evidence in, and under the circumstances of, the case the deed of sale was, and had remained throughout, a *benami* transaction. The general rule in India, in the absence of all other relevant circumstances, laid down in *Dhurm Das Pandey* v. *Shama Soondri Dibiah, 3 Moo. I. A. 229*, that "the criterion in these cases is to consider from what source the money comes with which the purchase money is paid" followed. It is open to a litigant to refrain from producing any documents which he considers irrelevant; and if the opposing litigant is dissatisfied, it is for him to apply for an affidavit of documents and he can so obtain inspection and production of all that appear to him in such affidavit to be relevant and proper. If he fails to do so, neither he, nor the Court at his suggestion, is entitled to draw any inference as to the contents of any such documents. It is for the litigant who desires to rely in the contents of documents to put them in evidence in the usual and proper way; if he fails to do so, no inference in his favour can be drawn as to the contents of them. A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. BILAS KUNWAR *v.* DESRAJ RANJIT SINGH (1915)

I. L. R. 37 All. 557

BENAMIDAR.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 89. **I. L. R. 37 All. 414**

1. ——————— *Right of suit. Held,* on suit for sale on a mortgage, that the facts that the mortgagee named in the bond is only a *benamidar* and that the real owner of the bond is known to the Court are no bar to the maintenance of the suit by the person named in the bond as mortgagee. *Yad Ram* v. *Umrao Singh, I. L. R. 21 All. 380*, referred to. PARMESHWAR DAT *v.* ANARDAN DAT (1914) . **I. L. R. 37 All. 113**

BENAMIDAR—*concld.*

2. ——————— The view taken in *Ram Behari Sarkar* v. *Surendra Nath Ghose, 19 C. L. J. 34*, that a *benamidar* defendant in a mortgage suit represents the interests of the persons beneficially entitled, approved. KANAI LAL JALAN *v.* RASIK LAL SADHUKHAN (1914)

19 C. W. N. 361

BENCH OF MAGISTRATES.

See MAGISTRATES, BENCH OF.

BENGAL ACTS.

——— **1865—VIII.**

See RENT RECOVERY ACT.

——— **1870—VI.**

See VILLAGE CHAUKIDARI ACT.

——— **1875—V.**

See BENGAL SURVEY ACT.

——— **1876—VI.**

See CHOTA NAGPUR ENCUMBERED ESTATES ACT.

——— **1879—I.**

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT.

——— **1882—II.**

See EMBANKMENT ACT.

——— **1895—I.**

See PUBLIC DEMANDS RECOVERY ACT.

——— **1897—V.**

See ESTATES PARTITION ACT.

——— **1899—III.**

See CALCUTTA MUNICIPAL ACT.

——— **1908—VI.**

See CHOTA NAGPUR TENANCY ACT.

——— **1914—VI.**

See BENGAL MEDICAL ACT.

BENGAL CHAMBER OF COMMERCE.

See ARBITRATION.

I. L. R. 42 Calc. 1140

BENGAL MEDICAL ACT (BENG. VI OF 1914).

——— **s. 27**—*Rules framed under the Act by Local Government, if ultra vires—Specific Relief Act (I of 1877), s. 45—Mandamus—Omission of qualified candidate's name from Election Roll—Mistake of Returning Officer—Jurisdiction of High Court to interfere.* The petitioner was a Licentiate in Medicine and Surgery of the University of Calcutta and as such was admittedly entitled to be registered under s. 4 of the

BENGAL MEDICAL ACT (BENG. VI OF 1914)—*concld.*

——— **s. 27**—*concld.*

Bengal Medical Act. The petitioner's name was omitted from the preliminary list of persons qualified to vote at the first elections under the Act published by the Returning Officer appointed by the Local Government. His name was also omitted from the final Election Roll. The petitioner's application to the Returning Officer to have his name entered was not considered by that officer. The petitioner applied to the High Court under s. 45 of the Specific Relief Act for an order compelling the Returning Officer to include and publish his name in the final Election Roll. *Held*, that the High Court had no jurisdiction to interfere. Under rule 16 of the rules framed by the Local Government under the Bengal Medical Act, the decision of the Local Government on any question that may arise as to the intention, construction or application of the rules shall be final, and under s. 27 of the Act no suit or other legal proceedings shall lie in respect of any act done in the exercise of any power conferred by the Act on the Local Government or the Council or the Registrar. The act which is referred to in s. 27 is not one done by the Local Government, but done in exercise of any power conferred by the Act on the Local Government. *Per* Chaudhuri, J.—It is quite clear that under s. 33 of the Bengal Medical Act the Local Government has power to make rules for the purpose of carrying out the Act, and the rules framed and published were not *ultra vires*. *Per* Woodroffe and Coxe, JJ.—Even assuming that the rules were *ultra vires*, the application must fail; for it was based on the assumption that the rules were not *ultra vires* but that they were valid rules which had not been given effect to in one particular by the Returning Officer. NARENDRA NATH BASU *v.* H. L. STEPHENSON (1914) . . **19 C. W. N. 129**

BENGAL MUNICIPAL ACT (BENG. III OF 1884).

——— **ss. 321, 322** (*4*)—"*Dwelling house*," *what is*. To "dwell" is "to live and occupy for all the purposes of life." A house in which a person occupied rooms, though he was absent occasionally on duty, might be properly described as his "dwelling house." Where, however, all that was found was that a holding was used as a place of business, but the owner used the place for residence while he was in a state of unsound mind, it was not his "dwelling house" though there was a cookshed or cowshed on the property, for there may be a cookshed or a cowshed on a property which is not a dwelling house, but merely a place of business. *Ford* v. *Barnes*, 55 *L. J. Q. B. 24*, and *Riley* v. *Read*, *48 L. J. Exch. 437*; *L. R. 4 Exch. Div. 100*, referred to. *Lawson* v. *Fraser*, *8 L. R.* (Ir.) *55*, distinguished. Semble: The provisions of the proviso to sub-*s.* (*4*) to s. 322 of the Bengal Municipal Act have been made superfluous by the amendment by Beng. Act IV of 1894 and Beng. Act II of 1896 of s. 321.

BENGAL MUNICIPAL ACT (BENG. III OF 1884)—*concld.*

——— **s. 321**—*concld.*

RADHA GOBINDA MOJUMDAR *v.* KUMARKHALI MUNICIPALITY (1914) . **19 C. W. N. 1027**

BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT (XII OF 1887).

See CIVIL COURTS Act.

——— **ss. 21, 22**—*Notification by the High Court authorizing appeals from Munsifs to be "preferred to" Subordinate Judges—Jurisdiction. Held*, that where the High Court in the exercise of powers conferred upon it by section 21 (*4*) of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887, issued a notification that appeals from the decree of any particular Munsif should be "preferred to" the Court of Subordinate Judge named or designated therein, the Subordinate Judge in question had power not merely to receive such appeals but also to hear and decide them. *Sohan Lal* v. *Baldeo Pershad*, 7 Oudh Cases, 321, approved. SHEO HARAKH *v.* RAM CHANDRA (1914) . . . . **I. L. R. 37 All. 76**

——— **s. 22, cl.** (*3*)—*Agra Tenancy Act*, (*II of 1901*), *s. 197—Transfer of an appeal in a suit cognizable by a Revenue Court to a Subordinate Judge—Powers exercisable by the latter. Held*, that where, under section 22, clause (*1*), of Act XII of 1887, a District Judge transfers an appeal to a Subordinate Judge, the latter may, if the section be applicable, exercise any of the powers vested in the Appellate Court by section 197 of the Agra Tenancy Act. *Babu Nandan Prasad* v. *Changur*, *I. L. R. 16 All. 360*, followed. AFZAL SHAH *v.* MUHAMMAD ABDUL KARIM (1915) . . . **I. L. R. 37 All. 232**

BENGAL SURVEY ACT (BENG. V OF 1875).

——— **ss. 41, 63**—*Register kept in Survey Office showing what are daripin lands—Admissibility.* An order under section 41 of the Bengal Survey Act does not bind the Civil Court upon the question of title and does not preclude it from finding that during a period anterior to that order the party against whom the order was passed was in possession. GRAHAM *v.* PHANINDRA NATH MITRA, (1915). . . . . **19 C. W. N. 1038**

BENGAL TENANCY ACT (VIII OF 1885).

——— **s. 4**—*Raiyat at fixed rent, who is "kaimi," if implies fixity of rent—"Sthayee" in an under-raiyat's kabuliyat if imports permanent heritable grant—Under-raiyati interest, if heritable.* The use of the word "kaimi" imports not fixity of rent, but only permanence of occupation of land. The description of a sub-lease granted by an occupancy *raiyat* as "*sthayee karsha kabuliyat*" did not necessarily imply that the grantee was intended to have a permanent heritable interest—an interest which the *raiyat* was not authorised to create by law. The interest of an under-raiyat is not heritable. *Arip Mondal* v.

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

s. 4—*concld.*

Ramratan Mondal, I. L. R. 31 Calc. 757 : 8 C. W. N. 479, referred to. MEHER ALI *v.* KALAI KHALASI (1915) . . . **19 C. W. N. 1129**

ss. 12, 63, Sch. II—*Permanent tenure, transfer of—Tenant, transferor or transferee—Tender of rent by transferee, coupled with demand of statutory receipt, if valid tender—Landlord, if may insist on giving receipt in another form.* The transfer of a permanent tenure under s. 12 of the Bengal Tenancy Act is complete as soon as the document is registered, and a valid transfer under that section operates to discharge the transferor from the liability to pay rent which thereupon passes to the transferee. As a consequence the transferee becomes by operation of law the tenant of the tenure, and the transferor ceases to be the tenant, though he is not thereby necessarily absolved from liability under the terms of the contract between him and the landlord. Such a transferee when he tenders rent as tenant is entitled under s. 63, Bengal Tenancy Act, to claim a receipt with his name thereon as that of the tenant. Where the landlord upon the transferee's demanding it refused to grant such a receipt and proposed to grant another describing the original tenant as still the tenant of the tenure and the transferee as merely the person in occupation thereof: *Held*, that there was a valid tender wrongly refused by the landlord. A tender is not vitiated because a receipt is asked. A tenant who tenders rent with a request for a receipt in the statutory form, does not seek to impose on the landlord any condition on which he is not entitled to insist, and when the landlord refuses to give such a receipt and offers to grant a receipt in a form which would compromise the position of the transferee, there is an improper refusal of a valid tender. RUP CHAND GHOSE *v.* NARENDRA KRISHNA GHOSE (1914) . . **19 C. W. N. 112**

s. 18—*Raiyat at fixed rent—Proof of permanency—Such raiyat if may grant leases—Sub-lessee, if may apply for deposit under s. 170 (3).* Where a raiyati lease explicitly stated that it was granted upon a rent of Rs. 5 a year, that the tenant would enjoy the land from generation to generation and that the landlord would not claim more rent than what was settled, the lessee was a raiyat at a fixed rate of rent and his interest was under s. 18 of the Bengal Tenancy Act, subject to the same provisions with respect to the transfer of and succession to the holding as that of a permanent tenure-holder under s. 11. The term "transfer" as used in s. 11 or s. 18 of the Bengal Tenancy Act includes a lease. The provisions of s. 85 of the Act are subject to those of s. 18 and the former section has no application where s. 18 applies. Where a raiyat at a fixed rate of rent granted a *makurari maurasi* sub-lease in favour of certain persons, and the latter in order to save the holding from sale in execution of a rent decree obtained against the raiyat applied to deposit the decretal amount under s. 170 (*3*) of the Bengal Tenancy Act:

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

s. 18—*concld.*

Held, that they were entitled to do so. HARI MOHON PAL *v.* ATUL KRISHNA BOSE (1913). **19 C. W. N. 1127**

s. 22 (2)—*Acquisition of occupancy right by landlord—Holding, if ceases to exist—Occupancy holding and occupancy right, distinction between.* The plaintiff who was an occupancy raiyat subsequently purchased the superior tenure. Thereafter A, who was an under-raiyat on the holding, transferred his interest in the land to B. The plaintiff's suit was for ejecting B. *Held*, that the effect of the purchase by the plaintiff which must be determined with reference to s. 22 (*2*) of the Bengal Tenancy Act was to vest the holding in the purchaser subject to the limitation that the occupancy right ceased to exist and not that the holding itself ceased to exist and A continued to be an under-raiyat under the purchaser. That a comparison of the phraseology of sub-s. (*2*) with that of sub-s. (*1*) of s. 22 shows that in sub-s. (*1*) a distinction is made between "occupancy holding" and "occupancy right," and when the occupancy right ceases to exist, it does not follow that the holding also vanishes. AKHIL CHANDRA BISWAS *v.* HASAN ALI SADAGAR (1913) **19 C. W. N. 246**

ss. 26, 178, sub-s. (3), cl. (d)—

See OCCUPANCY HOLDING.
I. L. R. 42 Calc. 254

s. 29—

1. *Class of agreements in kabuliyats not affected by the section.* An agreement embodied in a *kabuliyat* to pay a certain amount of rent agreed upon by the parties in settlement of a *bonâ fide* dispute regarding the rate of rent and to avoid further litigation, is not an agreement in violation of the terms of s. 29 of the Bengal Tenancy Act. BATA MONDAL *v.* MANINDRA CHANDRA NANDI (1914) **19 C. W. N. 321**

2. *Kabuliyat, construction of—Hajat, allowance of, for a term, at the end of which full rent payable—Suit for full rent at the end of the term, if suit for enhancement.* In a kabuliyat, dated 1st of Baisakh 1295, executed in respect of a *meadi sarasari jote* which was to have effect for three years, the amount of rent was stated to be Rs. 19 odd, but it was provided that a *hajat* (deduction) of Rs. 10-8-4½ gandas was to be allowed till the end of the term, but that on the expiry of the term, the full *jama* of Rs. 19 odd was to be paid. The landlord sued upon the *kabuliyat* to recover arrears of rent for the year 1299 onward at Rs. 19 odd. The tenant did not set up any case that the document was never intended to be acted upon, and nothing in regard to conduct amongst themselves was placed by the parties for determination before the Court. *Held*, upon a construction of the *kabuliyat*, that the suit was not for enhancement and that s. 29 of the Bengal Tenancy Act was no bar to recovery by the landlord at the rate

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 29**—*concld.*

claimed. ROMES CHANDRA BISWAS *v.* GOLAM NABI FAKIR (1898) . . **19 C. W. N. 867**

——— **ss. 30, 188**—*Shebaits, joint—Suit for enhancement of rent if may be brought by one shebait alone—Joint trustees—Consent of co-trustee if authorises suit by some only—Authority to sue, necessity to prove—Joint landlords, if shebaits.* Joint *shebaits* are, in some respects, joint trustees. Where one of two *shebaits* of an idol sued a tenant holding *debutter* land for enhancement of rent under s. 30, Bengal Tenancy Act, making the other *shebait* a co-trustee, and alleging that the latter had ceased to reside in the village and was no longer interested in the management of the endowed property, and the defendant *shebait* filed a written statement in which she stated that she had no longer any connection with the endowment and did not object to enhancement of rent at the plaintiff's instance: *Held*, that the plaintiff and the *shebait* defendant were joint landlords within the meaning of s. 188, Bengal Tenancy Act, and the right to institute the suit vested jointly in them as *shebaits*. *Jagadindra Nath Roy* v. *Hemanta Kumari Debi*, *8 C. W. N. 809*: *I. L. R. 32 Calc. 129*, followed. That to succeed in the suit both *shebaits* should have joined as plaintiffs, or plaintiff should have made out a case that he was authorised by his *co-shebait* to maintain the suit on her behalf. That no foundation for a case of agency had been laid in this case. That renunciation by the defendant *shebait* of her rights as *co-shebait* in a manner known to law should have been proved to justify the plaintiff suing alone. ABDUL GOFUR MANDAL *v.* UMAKANTA PANDIT (1914) . . . **19 C. W. N. 260**

——— **s. 40**—*Competence of Revenue Court where tenant not occupancy raiyat and rent not produce rent—Civil Court if may question its competence on such ground.* The exercise of jurisdiction by a Revenue Court under s. 40 of the Bengal Tenancy Act presupposes that the raiyat is an occupancy raiyat and the rent is paybale in kind as indicated in that section, and Civil Courts can consider the competence of the Revenue Court in commutation proceedings, where a suit is brought for recovery of arrears of rent as determined by those proceedings. *Kali Krishna Biswas* v. *Ram Chandra Baidya*, *19 C. W. N. 823*, followed. DURGA MOHAN GANGOPADHYA *v.* SUKUMAR DAS, (1915) . . . . . **19 C. W. N. 825**

——— **s. 50** (*2*)—*Slight variations in the rent paid with corresponding variations in area—Presumption of permanency, if arises.* Where a raiyat proved that for over 20 years, that is to say, from 1882 he had been paying the same rent for the holding: *Held*, that the presumption arising under sec. 50 (2) of the Bengal Tenancy Act that he had held the land at a uniform rate of rent from the time of the Permanent Settlement was not rebutted by the landlord proving slight variation in the rents paid between 1864 and 1878, which was sufficiently explained by a very nearly corresponding variation in the area. *Huronath* v. *Amir*, *1* W. R. 230, and *Anundloll v. Hills*. 4 W. R., *Act X*, *33*, relied on. *Bissessur* v. *Woomachurn*, *7 W. R. 44* and *Gopal Mundul* v. *Nobbo Kishen*, *5 W. R., Act X*, *83*, referred to. GRANT *v.* HAR SAHAY SINGH (1913) . **19 C. W. N. 117**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 50**—*concld.*

——— **ss. 52, 188**—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 42, CL. 1 (*a*) AND (*b*) AND 2.

I. L. R. 38 Mad. 524

——— **ss. 61, 62, Sch. III, Art. 2** (*a*)—*Rent payable partly in cash and partly in kind and in lieu of latter a fixed sum—Deposit by tenant—Amount deposited less than amount due—Suit by landlord to recover rent—Limitation.* The provisions of ss. 61 and 62 of the Bengal Tenancy Act, taken as a whole, support the view that the period of limitation prescribed in Art. 2, cl. (*a*), of Sch. III of the Bengal Tenancy Act is applicable to a suit for rent wherever rent has been deposited under s. 61, even though the allegation of the tenant that what he had deposited was the full amount due at the time, may ultimately prove to be incorrect. *Sridhar Roy* v. *Rameswar Singh*, *I. L. R. 15 Calc. 166*, and *Sati Prosad Garga* v. *Monmotha Nath Kar*, *18 C. W. N. 84*, considered. No deposit can be made of rent in kind under s. 61 of the Bengal Tenancy Act. But where the parties have agreed that upon failure to deliver the rent payable in kind a fixed sum is to be paid in lieu thereof the entire rent is payable in cash and s. 61 is applicable to such a case. *Afer Morole* v. *Prosunna Kumar Ghosh*, *12 C. L. J.* 649: *15 C. W. N. 249*, referred to. SASIBHUSAN DEY *v.* UMA KANTA DEY (1914) . . . **19 C. W. N. 1143**

——— **ss. 86** (*6*), **88**—*Surrender of holding without the consent of mortgagee of portion of holding—Suit to eject mortgagee after settlement of remaining land with another—Subdivision of holding.* The provision of s. 86 (*6*) of the Bengal Tenancy Act embodies within certain bounds the principle that the lessee has no power to effect by surrender anything he could not do by assignment to a third person. *Walter* v. *Yalden*, [*1902*] *2 K. B. 304*, referred to. A surrender of a raiyati holding by the raiyat, without the consent of a usufructuary mortgagee of a portion of the holding, does not entitle the landlord to eject the mortgagee, and where the landlord after such surrender himself settled the rest of the land with another, the subdivision of the holding was effected by the landlord and so did not offend against s. 88. RAGHUNATH SINGH *v.* WILLIAM COX (1914) . . . . **19 C. W N. 268**

——— **s. 87**—

See OCCUPANCY HOLDING.

I. L. R. 42 Calc. 172

——— *If exhaustive—Abandonment by tenant.* S. 87 of the Bengal Tenancy

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 87**—*concld.*

Act is not exhaustive and the landlord may proceed by suit if he can prove that the facts and circumstances of the case lead to an inference of abandonment. MATOOKDHARI SHUKUL *v.* JUGDIP NARAIN SINGH (1914) . **19 C. W. N. 1319**

——— **s. 105**—

1. ——— *Enhancement of rent—Second appeal, if lies against decision of Special Judge.* A second appeal lies to the High Court against the judgment of the Special Judge affirming a decision of the Assistant Settlement Officer allowing enhancement of rent in a case brought by the landlord under s. 105, Bengal Tenancy Act, in which the decision depended upon whether the raiyat was an occupancy raiyat only or a raiyat at fixed rates, the question being one as to the incidents of the tenancy. *Prithichand Lal Choudhury* v. *Basarat Ali, 13 C. W. N. 1149 : I. L. R. 37 Calc. 30,* and *Bisheshur Ray* v. *Rajendra Kumar, 18 C. W. N. 949,* followed. AKBAR ALI KHAN *v.* SYED ABBAS (1915) . . **19 C. W. N. 1328**

2. ——— *Record-of-rights, applicability of—S. 103A, if precludes enquiry as to correctness of entry.* Where on an application by a landlord under s. 105 of the Bengal Tenancy Act for settlement of fair rent wherein he claimed enhancement against a tenant who was wrongly entered in the record as *korfa,* and the purpose of whose tenancy was described as residential, the special Judge enhanced the rent : *Held,* that the decision of the Special Judge was without jurisdiction inasmuch as the tenancy was not governed by the Bengal Tenancy Act and the tenant was not estopped from raising this plea. The provision of s. 103A of the Tenancy Act that the publication of the record-of-rights shall be conclusive evidence that it has been duly made under the Chapter does not preclude a Court from enquiring as to the correctness of the resultant entry ; it only precludes the Court from going into the question whether the procedure under the Chapter has been followed. RAMDAS MUKERJEE *v.* BIPRODAS PAL CHOUDHERY (1913) **19 C. W. N. 35**

——— **ss. 105, 106, 109**—*Landlord's application for settlement of fair rent—Tenants not allowed to prove land lakheraj or held at fixed rent—Settlement of fair rent if precludes suit to declare land lakheraj or held at fixed rent—Omission to sue under s. 106, if bars suit in Civil Court.* The decision of a Settlement Officer in a proceeding initiated by the landlord under s. 105 of the Bengal Tenancy Act (before amendment by Beng. Act I of 1907) as to what is fair and equitable rent is no bar to a suit by the tenants for a declaration that the lands in respect of which the rents have been settled were *lakheraj* or were held at fixed rents. Section 109 of the Act would be no bar to such suits as it was not competent to the Revenue Officer in a proceeding under s. 105 to go behind the finally published record-of-rights. The fact that

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 105**—*concld.*

the tenants did not institute suits under s. 106, did not deprive them of their right to sue in the Civil Court. SASHI BHUSAN HAZRA *v.* SHEIKH ESHABAR ALI NAZIR (1915) . **19 C. W. N. 636**

——— **s. 105A**—*Settlement of jungle and waste land for reclamation—Co-sharer landlord managing estate—Occupation and reclamation by lessee acquiesced in by all the co-sharers—Subsequent refusal by same after partition to accept lessee as tenant in respect of their particular shares—Status acquired by lessee—Lessee, if entitled to have fair rent assessed.* The plaintiff sued to have fair rent settled in respect of land held by him. The land in suit was originally included in a village which belonged to one B and his co-sharers, and was partly jungle and partly waste. B took possession of the land without any protest by his co-sharers and in the ordinary course of management of the estate settled the land with the plaintiff. Subsequently there was a partition amongst the co-sharers, and some of them accepted rent from the plaintiff while two of them refused to do so. So far as the lands allotted to their shares were concerned, there was no suggestion that the plaintiff came into occupation of the land against the will of the co-sharers of B, who on the other hand acquiesced in the occupation by the plaintiff and in the reclamation of the land by her at considerable cost for a number of years. *Held,* that the position of the plaintiff was not worse than what it would have been if he had in good faith accepted settlement from a trespasser in actual occupation of the land in which event even he would have attained the status of a raiyat. That the plaintiff was entitled to have fair rent assessed in respect of the land held by him. *Watson* v. *Ram Chund, I. L. R. 18 Calc. 10, Binod Lal* v. *Kalu, I. L. R. 20 Calc.* 708, and *Radha Proshad* v. *Esup, I. L. R. 7 Calc. 414,* referred to. DAKHYANI DASSI *v.* MONO RAUT (1913) . **19 C. W. N. 407**

——— **s. 106**—*Person out of possession claiming land recorded as mal to be lakheraj, if may sue under s. 106—Recovery of possession, if may be given in such suit—Declaration of right when out of possession, if proper.* A person who is not in possession of land which is claimed as rent-free at the date of the record-of-rights cannot have the mere question of his title to hold the land rent-free tried in a suit under s. 106 of the Bengal Tenancy Act. *Padmalav* v. *Lakhi Rani, 12 C. W. N. 8, Kali Sundari Debya* v. *Girija Sankar Saynal, 15 C. W. N. 974,* and *Ram Chandra* v. *Nanda Nandanananda Gossain,* 18 C. W. N. 938 : *19 C. L. J. 197,* referred to. A plaintiff cannot sue for possession under sec. 106 of the Bengal Tenancy Act. Nor, if he is out of possession at the date of the suit, can he be given a declaration of his right to get possession. He can obtain complete remedy only in a suit in the Civil Court. *Nilmani Kumar* v. *Kedar Nath Ghosh, 17 C. W. N. 750,* followed. The words " or as to any other matter " in s. 106 must have reference to the

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

s. 106—*concld.*

matters indicated in s. 102. PRAN KRISHNA SAHA *v.* TRAILAKHYA NATH CHOUDHURI (1915) **19 C. W. N. 911**

s. 109A—*When bars an appeal—Question of jurisdiction.* S. 109A of the Tenancy Act is no bar to an appeal in a case of settlement of rent in which a question of jurisdiction is definitely raised. RAMDAS MUKERJEE *v.* BIPRODAS PAL CHOUDHERY (1913) . . **19 C. W. N. 35**

s. 109B—*Scope of enquiry under.* The enquiry under sub-s. (*1*) of s. 109B is obviously contemplated in a case where the agreement or compromise has been made for the purpose of settling a dispute, namely, a dispute which the Revenue Officer would be called upon to decide on the merits but for the agreement or compromise. Section 109B clearly does not apply to a case, where the contract between the parties was made several years before the settlement proceedings. BATA MONDAL *v.* MANINDRA CHANDRA NANDI (1914) . . . . **19 C. W. N. 321**

s. 111—*Suit for alteration of rent brought within three months of final publication of record-of-rights, if should be dismissed or stayed.* A suit for alteration of rent instituted within three months of the final publication of the record-of-rights should not be dismissed altogether but should be stayed until the expiry of this period. On appeal from a decision of the lower Appellate Court dismissing such a suit, the three months having expired long ago, the High Court directed a trial of the suit on the merits *de novo*, the appellant being directed to pay the costs of the lower Appellate Court and of the High Court. *Ram Narayan* v. *Lachmi Narayan, 17 C. L. J. 239 : 17 C. W. N. 408*, followed. HIRA KOER *v.* LACHMAN GOPE (1913) . . . **19 C. W. N. 1141**

ss. 111A, 104H, 103B—*Occupancy right, suit for declaration of, after final publication of record-of-rights—Limitation—Presumption as to correctness of record, rebutting of.* The plaintiff brought his suit for a declaration that he was an occupancy-raiyat of the land in suit. The suit was brought more than six months from the final publication of the record-of-rights. The holding was of an extent of 203 bighas and the tenancy in its inception was created for cultivating purposes. All the tenants on the land were *bhagchasis* under the plaintiff who and his predecessors had been recorded as raiyats in former settlements. *Held*, that the plaintiff and his predecessors having held the land for more than 12 years had a right of occupancy in the land. That the presumption created by s. 103B of the Bengal Tenancy Act was rebutted. That the suit came within the proviso to s. 111A and not under s. 104H and was not barred by limitation. KUMEDA PROSUNNA BHUIYA *v.* SECRETARY OF STATE FOR INDIA (1914). **19 C. W. N. 1017**

s. 153—

1. ——— *Commutation order by Revenue Court, if bars trial of tenant's status in Civil Court—Jurisdiction of Revenue Courts—Question as to amount annually payable.* Where the landlord sued to recover rent at an annual rate of Rs. 30, the price stated in the tenant's *kabuliyat* of the paddy payable by the tenant as rent, and the latter on the strength of a commutation order made under s. 40 of the Bengal Tenancy Act alleged that the rent was recoverable at the rate of Rs. 13-6-6 a year : *Held*, that the decision of the lower Appellate Court upholding the tenant's plea was a decision on a question of the amount of rent annually payable within s. 153 of the Bengal Tenancy Act. *Apurba Krishna Roy* v. *Ashutosh Dutt, 9 C. W. N. 122*, approved. A proceeding under s. 40 is founded on the assumption that the tenant whose rent is sought to be commuted is an occupancy raiyat. A dispute as to the status of the tenant cannot be finally decided by the Revenue Court in such a proceeding so as to make such decison conclusive between the parties in the Civil Court. The tenant being found in this case to be an under-raiyat : *Held*, that the order under s. 40 made by the Revenue Court was without jurisdiction. *Lalla Saligram Singh* v. *Mohunt Ramgir, 3 C. W. N. 311*, distinguished. KALI KRISHNA BISWAS *v.* RAM CHANDRA BAIDYA (1915) . . . . **19 C. W. N. 823**

2. ——— *Explanation—Rent sale—Purchase by decree-holder—Judgment-debtor's application to set aside on ground of fraudulent suppression of notices—Dismissal on ground that case not brought within s. 18 of Limitation Act, if appealable.* Where more than 30 days after a sale in execution of a decree passed in a suit for recovery of rent, in which the amount claimed did not exceed fifty rupees, an application was made to set it aside on the ground that no processes of attachment or proclamation were served upon the properties, and that the decree-holder fraudulently and in collusion with the peon got all the processes suppressed and having thus brought about the sale purchased the property himself, but the Munsif refused to set aside the sale on the ground that there was no such fraudulent concealment as to bring the case within s. 18 of the Limitation Act : *Held, per Curiam*, that this was not a finding upon a question as to the irregularity of the proceedings in publishing or conducting the sale within the meaning of the explanation to s. 153 of the Bengal Tenancy Act, and an appeal lay from the Munsif's decision under the Full Bench ruling in *Kali Mundal* v. *Ramsarbeswar Chakrabutty, I. L. R. 32 Calc. 957 : 9 C. W. N. 721. Per* N. R. Chatterjea, J.—A question as to fraud in publishing or conducting a sale is not covered by the explanation. *Per* Mullick, J.—An irregularity in publishing or conducting a sale may be accompanied with or without fraud. The explanation does not exclude from its scope an irregularity tainted by fraud. NABIN CHANDRA CHOUDHURY *v.* BEPIN CHANDRA CHOUDHURY (1915) . **19 C. W. N. 953**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **ss. 153, 143, sub-s. (2)**—*Appeal against dismissal of suit for recovery of arrears of rent for less than Rs. 100, ex parte decree in—Order refusing application for rehearing of appeal, if appealable—Suit, meaning of, if includes appeal—Application for re-hearing of appeal, if an application in the suit—Civil Procedure Code, application of, to suits between landlord and tenant.* A suit for recovery of arrears of rent for less than Rs. 100 was dismissed on the merits. The plaintiff's appeal against this decree was decreed *ex parte*. The respondent's application under O. XLI, r. 21, Civil Procedure Code, to have the appeal re-heard in his presence having been refused an appeal was preferred against this order to the High Court: *Held*, that s. 153 of the Bengal Tenancy Act was a bar to the appeal. The term "suit" includes the appellate stage, and an application to re-hear the appeal is clearly an application in the suit. Sub-s. (2) of s. 143 of the Bengal Tenancy Act, which makes O. XLIII, r. 1, cl. (*t*), Civil Procedure Code, applicable to suits between landlord and tenant, makes it applicable subject to the operation of the restrictive provision of s. 153 of the Bengal Tenancy Act, and the absence of the restrictive words "in a case open to appeal" from cl. (*t*) does not give the right of appeal. CHAMED SHEIKH *v.* NABA GOPAL GHOSH (1914) . . . **19 C. W. N. 359**

——— **s. 153A**—*Ex parte decree or rent, application to set aside—Tenant when bound to deposit rent admitted—Tenant alleging land in suit only part of holding bearing another jama—Application made out of time, entertained by Court without adjudication of question of limitation—Revision by High Court—Civil Procedure Code (Act V of 1908), s. 115.* The admission contemplated in s. 153A of the Bengal Tenancy Act is an admission that rent is due in respect of the holding for which the suit has been instituted. Where the tenant defendant alleged that the land mentioned in the plaint as constituting a holding of a *jama* of Rs. 3-10 was in fact a part of a holding bearing an annual *jama* of Rs. 7-12: *Held*, that there was no admission of liability to pay rent in respect of the holding in suit but in respect of a different holding and s. 153A did not apply. TARA SANKAR GHOSH *v.* BASIRUDDI (1915) . **19 C. W. N. 970**

——— **s. 161**—

1. ——— *Permanent under-raiyati lease, registered—Landlord of occupancy holding purchasing holding if bound to annul it as incumbrance or protected interest.* An under-raiyati lease registered in contravention of s. 85, sub-s. (2), of the Bengal Tenancy Act, is not operative against the superior landlord of the occupancy raiyat. *Jarip Khan* v. *Dorfa Bewa, 17 C. W. N. 59*, and *Manik Borai* v. *Bani Ch. Mandal, 13 C. L. J. 649*, referred to. The landlord of the occupancy holding purchasing that holding at a sale for its arrears cannot be called upon to annul a permanent under-raiyati lease created without his consent as an incumbrance within the meaning of cl. (*a*) of s. 161 of the Bengal Tenancy Act, nor is such an interest a "protected interest" within s. 161, cl. (*e*), of the Act, so far as the landlord auction-purchaser of the occupancy holding is concerned. ASHU TOSH SINGHA *v.* BANOMALI SAIN (1913) . . **19 C. W. N. 412**

2. ——— *Stranger purchasing raiyati holding at sale for arrears of rent, if may eject under-raiyat without annulling his interest.* The interest of the under-raiyat is an "incumbrance" within the meaning of s. 161 of the Bengal Tenancy Act which a stranger purchasing at a sale for arrears of rent is bound to annul according to the procedure laid down in s. 167 of the Bengal Tenancy Act, and where this procedure has not been followed the purchaser is not entitled to eject the under-raiyat. JANAKI NATH HORE *v.* PRABHASINI DASI (1915) . **19 C. W. N. 1077**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 161**—*concld.*

——— **ss. 161, 167**—"*Incumbrance,*" *portion of putni tenure purchased from tenant if—Sale of tenure in execution of rent-decree against registered tenant—Purchaser if must annul transferee's interest.* Jenkins, C. J. (agreeing with N. R. Chatterjea, J.)—The interest of an unregistered purchaser of a portion of a *putni*, tenure is not an "incumbrance." Within the meaning of s. 161 of the Bengal Tenancy Act and need not be annulled under s. 167 of the Act by the purchaser of the tenure at a sale in execution of a rent-decree obtained against the registered tenant. *Chander Sahai* v. *Kali Prosunna Chakerbutty, I. L. R. 23 Calc. 254*, referred to. *Per* Mullick J. (*contra*)—A purchaser from a registered tenant is in the position of a rent-free sub-tenant and is an incumbrancer within the meaning of s. 161 of the Bengal Tenancy Act. ABDUL RAHMAN CHOWDHURI *v.* AHMADAR RAHMAN (1915) **19 C. W. N. 1217**

——— **s. 169**—*sub-ss. (1) (c), (2), Sch. III, Art. 2—Rent sale—Surplus sale-proceeds, application by decree-holder for, towards discharge of subsequent arrears—Limitation, plea of, if may be taken.* Under cl. (*c*) to sub-s. (*1*) of s. 169 of the Bengal Tenancy Act, the decree-holder landlord is entitled to have the surplus sale-proceeds paid to him in discharge of arrears of rent due from the date of the institution of the suit to the confirmation of the sale, even though on the date of his application for such payment, a suit to recover those arrears would be time-barred. Art. 2 of Sch. III of the Bengal Tenancy Act provides for suits and not for applications of this kind. NARENDRA LAL KHAN *v.* SARAT CHANDRA BHATTACHARJEE (1915) . . . **19 C. W. N. 582**

——— **s. 171**—

See RATES AND TAXES.

I. L. R. 42 Calc. 625

——— **ss. 178 (1) (d), 194**—*Lease to tenure-holder, containing covenant not to excavate tank—Sub-lease to raiyat, without covenant—Excavation of tank by raiyat, found an improvement—Suit*

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— **s. 178**—*concld.*

for damages for breach of covenant, who liable—Nominal damage—Vindictive damage. Where a lease created in favour of certain tenure-holders contained a covenant by the latter not to excavate a tank, but a tank was nevertheless excavated by a raiyat who had taken from the tenure-holders a sub-lease which did not impose any similar restrictions on the raiyat: *Held*, that s. 178, sub-s. (*1*), cl. (*d*), of the Bengal Tenancy Act, being controlled by s. 194, the tenure-holders might have effectively inserted a restrictive covenant against excavation of tanks in the sub-lease granted to the raiyat. That for the breach of the covenant, the tenure-holders were liable, but not the raiyat between whom and the superior landlord there was neither privity of contract nor privity of estate. That although the tank was found to have improved the land, and the plaintiff thus suffered no damage in fact, he was entitled at least to nominal damage (which is not necessarily small damage) in vindication of his legal right—the breach of the covenant not appearing to have been deliberate, in which case vindictive damages might have been awarded. *Mediana* v. *Comet*, [*1900*] *A. C. 113, 116, Whitham* v. *Kershaw, 16 Q. B. D. 613, 618, Williams* v. *Williams, L. R. 9 C. P. 659, Wigsell* v. *The Corporation of the School for the Indigent and Blind, 8 Q. B. D. 357, Mellor* v. *Spateman*, 1 Saunders 346*b*, and *Patrick* v. *Greenaway*, 1 Saunders 346*b*, note, referred to. AKHOY KUMAR CHATTERJEE *v.* AKMAN MOLLA (1914) **19 C. W. N. 1197**

——— **ss. 182, 20**—*Raiyat, giving homestead portion of his holding in sub-lease to settled raiyat of another village—Sub-lessee if under-raiyat or has occupancy right.* Where a raiyat whose holding consisted partly of agricultural and partly of homestead land let out the homestead portion to a person who held land as a settled raiyat under a different landlord in an adjoining village: *Held*, that the incidents of the sub-lease of the homestead portion would be governed not by the Transfer of Property Act but by the Bengal Tenancy Act. That as s. 182 of the Bengal Tenancy Act applied, the sub-lessee held the homestead as a raiyat. KRISHNA KANTA GHOSH *v.* JADU KASYA (1915) . . **19 C. W. N. 914**

——— **s. 188**—S. 188 of the Bengal Tenancy Act does not apply to joint tenants, and a suit by a co-sharer for abatement of rent is maintainable. KHETTRAMANI DASI *v.* JIBAN KRISHNA KUNDU (1914) . . **19 C. W. N. 546**

——— **Sch. III, Art. 2, cl.** (*b*)—*Jalkar lease, due payable under, if rent within the meaning of Bengal Tenancy Act—Suit for recovery of such money if governed by special limitation—Interest rate of, upon arrears of such money.* A *Jalkar* does not necessarily imply any right to the soil and a suit for the recovery of money payable under a lease merely conferring a right of fishing and no right to land is governed by the special limitation provided by Sch. III, Art. 2, cl. (*b*), of the Bengal Tenancy Act. Money reserved in such lease is not rent within the meaning of the Bengal Tenancy Act and interest at the rate of 12½ per cent. as provided in s. 67 of the Act cannot be allowed in respect of arrears of such money. KRISHNA LAL CHOUDHURI *v.* SALIM MAHAMED CHOUDHURY (1914) . **19 C. W. N. 514**

BENGAL TENANCY ACT (VIII OF 1885)—*concld.*

——— **Sch. III**—*concld.*

——— **Sch. III, Art 6**—

1. ——— *Rent-decree, obtained by co-sharer landlord—Limitation for execution.* In the case of rent-decree obtained by a co-sharer landlord, the other co-sharers not having been made parties, the period of limitation prescribed for the execution of the decree is that contained in Art. 6 of Sch. III of the Bengal Tenancy Act, *i.e.*, three years only and not 12 years as provided by the Code of Civil Procedure. BYOMKESH CHAKRABARTY *v.* HALADHAR MANDAL (1915) . . . . . **19 C. W. N. 1271**

2. ——— *Suit by co-sharer landlord for his share of rent not making other co-sharers parties—Decree, execution of—Limitation.* An application for execution of a decree obtained by a co-sharer landlord for his share of the rent, in a suit to which the other co-sharers were not parties, the decree being for a sum of money not exceeding Rs. 500, is governed by the special limitation provided by Art. 6 of Sch. III of the Bengal Tenancy Act, as amended by Act I of 1908. NARENDRA CHANDRA LAHIRI *v.* AFIFANNESSA BIBI (1915) . **19 C. W. N. 751**

BEQUEST.

——— **by co-parcener**—

See HINDU LAW—WILL.
I. L. R. 39 Bom. 593

BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862).

——— **s. 3**—*Unrecognised sub-division of a bhag—Mortgage—Covenant in the mortgage-deed—Claim for compensation based on covenant maintainable—Contract Act (IX of 1872), s. 65—Specific Relief Act (I of 1877), s. 38—Mortgagor holding as tenant of mortgagee for upwards of twelve years—Adverse possession of limited interest.* In 1897, the house in suit and certain other properties were mortgaged to the plaintiff's father by the defendants they having purchased the properties from the bhagdar owner in 1893. In 1901, on accounts being taken, part of the property was sold to pay part of the mortgage debt, while the balance of the debt was secured by a fresh mortgage of the house in suit. The deed of mortgage contained a covenant in the following terms:—"If there should be any hindrance or obstruction concerning the house, or if the house should be taken out of your possession, then we and our property and our heirs and representatives are liable for any loss you may

BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862)—*concld.*

——— **s. 3**—*concld.*

suffer and for your moneys advanced." Ever since 1897 the defendants held the house as plaintiff's tenants under yearly rent-notes, the last of which was passed on 20th June 1908. At the termination of the last rent-note, that is in July 1909, the defendants refused to surrender possession to the plaintiff. On the 9th November 1910, the plaintiff sued to recover possession of the house or in the alternative Rs. 749 as compensation. The defendants contended that both the mortgage and rent-notes were void under the Bhagdari Act and that the suit was barred by limitation. The lower Courts upheld these contentions and dismissed the suit. The plaintiff having appealed: —*Held*, (*i*) that the mortgage as well as the rent-notes were void under the provisions of Bhagdari Act, 1862; (*ii*) that, so far as the contract of mortgage was concerned, the consideration failed *ab initio*, and the money advanced by the plaintiff being money received by the defendants for the plaintiff's use, the suit to recover it was barred under Article 62 of the Limitation Act; (*iii*) that, although the mortgage was void under the Bhagdari Act, it was open to the plaintiff to claim under the covenant contained in the mortgage-deed; (*iv*) that the plaintiff's possession from February 1897 to July 1909 gave him an absolute title to the limited interest as mortgagee and so justified his claim under the covenant for compensation for disturbance; (*v*) that the claim under the covenant was within time for the breach of the covenant did not occur till 1909 when the defendants refused, on demand, to surrender possession. JAVERBHAI JORABHAI *v.* GORDHAN NARSI (1914) . . **I. L. R. 39 Bom. 358**

BHINNA-GOTRA SAPINDAS.

See HINDU LAW—INHERITANCE.

I. L. R. 42 Calc. 384

BILL OF LADING.

——— *Clause of exemption from liability after goods are free of ship's tackle, validity of—Common carriers by sea, governed by English Law and not by Indian Contract Act (IX of 1872)—Indian Contract Act (IX of 1872), s. 23—Exemption clause not void under—Seaworthiness, definition of—Warranty of seaworthiness not extending to lighters or boats—Binding force of Privy Council decision on India, though not in an Indian case.* Carriers, by sea for hire are common carriers, to whom the Carriers Act (III of 1865) does not apply. *Hajee Ismail Sait* v. *The Company of the Messageries Maritimes of France, I. L. R. 28 Mad. 400*, followed. The duties and liabilities of a common carrier are governed in India by the principles of the English Common Law on that subject (except where they have been departed from, in the cases of some classes of common carriers, by the Carriers Act of 1865 or by the Railways Acts of 1878 and 1890), and that notwithstanding some general expressions in the Chapter on Bailments, a common carrier's

BILL OF LADING—*concld.*

responsibility is not within the Indian Contract Act of 1872. *The Irrawaddy Flotilla Company* v. *Bugwandas, I. L. R. 18 Calc. 620*, followed. A provision in a charter party to the effect that "in all cases and under all circumstances the liability of the company (of shipowners) shall absolutely cease when the goods are free of the ship's tackle and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee," affords complete protection to the shipowners against all losses in respect of goods arising from any cause at any time after the goods are free of the ship's tackle, whether the cause of the loss be (*a*) as in this case the sinking of the boats, which conveyed the goods from the ship to the shore, a sinking occasioned by the negligent overloading of the boats by the shipowner's landing agents or (*b*) by the misfeasance and fraud of their landing agents. *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd., I. L. R. 32 Mad. 95*, and *Chartered Bank of India, Australia and China* v. *British India Steam Navigation Co., Ltd.*, [*1909*] *A. C. 369*, followed. Such a clause as the above is, according to English Law, not opposed to public policy and is valid; and section 23 of the Indian Contract Act has no application. A decision of the Privy Council though not in a case arising from India is binding on the Courts in India. *Obiter:* The warranty of seaworthiness which is implied as to the ship does not extend to the lighters or boats employed to land the cargo. Even this warranty to the ship is satisfied if the ship be originally seaworthy, *i.e.*, when she first sails on the voyage insured; she need not continue so throughout the voyage. *Lane* v. *Nixon, 1 C. P. 412*, followed. *Sparrow* v. *Carruthers*, 2 Strange, 1236, doubted. KUMBER *v.* THE BRITISH INDIA STEAM NAVIGATION CO., LTD. (1913)

I. L. R. 38 Mad. 941

BIRTH.

——— **right by—**

See HINDU LAW—PARTITION.

I. L. R. 38 Mad. 556

BOARD OF REVENUE.

——— **reference by—**

See STAMP ACT (II OF 1899), s. 57 (*b*).

I. L. R. 37 All. 125

BOATS OR LIGHTERS.

See BILL OF LADING.

I. L. R. 38 Mad. 941

BOMBAY ACTS.

——— **1862—V.**

See BHAGDARI AND NARWADARI TENURES ACT.

——— **1862—VI.**

See AHMEDABAD TALUQDARS ACT.

——— **1869—XIV.**

See BOMBAY CIVIL COURTS ACT.

BOMBAY ACTS—*concld.*

——— **1874—III.**

See HEREDITARY OFFICES ACT.

——— **1876—II.**

See BOMBAY CITY LAND REVENUE ACT.

——— **1876—X.**

See REVENUE JURISDICTION ACT.

——— **1879—V.**

See BOMBAY LAND REVENUE CODE.

——— **1879—XVII.**

See DEKKHAN AGRICULTURISTS' RELIEF ACT.

——— **1887—VI.**

See MATADARS ACT.

——— **1888—VI.**

See GUJARAT TALUQDARS ACT.

——— **1901—III.**

See DISTRICT MUNICIPAL ACT.

——— **1904—I.**

See BOMBAY GENERAL CLAUSES ACT.

——— **1906—II.**

See MAMLATDARS' COURTS ACT, BOMBAY.

BOMBAY CIVIL COURTS ACT (XIV OF 1869).

——— **s. 16**—*Divorce Act (IV of 1869), ss. 4, 6, 7, 8 and 15—Decree for dissolution of marriage—Assistant Judge—Jurisdiction.* Section 16 of the Bombay Civil Courts Act (XIV of 1869) does not authorize any reference to an Assistant Judge to decide a suit under the Indian Divorce Act (IV of 1869). THOMAS FRENCH *v.* JULIA FRENCH (1914) . . **I. L. R. 39 Bom. 136**

BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876).

——— **ss. 30, 35, 39 40**—*Certified extracts of Rent Roll of "quit and ground rent" land—Office of Collector of Bombay—Statements therein as to nature of tenure of land—Suit by mortgagee relying on such extracts and advancing money on title there disclosed against Secretary of State—Act only for administration and collection of revenue—No estoppel created in matters of title—"Sanadi" tenure.*—The Bombay City Land Revenue Act (Bombay Act II of 1876) makes provision for the administration and collection of land revenue in the City of Bombay. It is for this purpose only that it sets up machinery, namely, to ascertain who is liable to pay revenue. The Collector is a revenue official, and it is only in so far as the collection of revenue is concerned that he is entrusted with the duty of preparing a register and keeping records. The public are given access to these only in order to satisfy themselves that they are being properly assessed. The Act does not purport to establish a system of registration of title which is to supersede other means of conveying or registering the title to land, or to relieve purchasers or mortgagees from the ordinary obligations to see that they get what they have contracted to get. No doubt the register is of considerable use even for conveyancing purposes. But neither the language of the Act, nor the character of the officials who have the duty of keeping it, is such as to indicate an invitation to the public to rely on statements in the records as to title which may have to be made incidentally, but which are not expressed, and do not purport to be decisive either of the rights of Government or of those of the individual as to matters which go beyond liability to contribute the land revenue. Where, therefore, the appellants, in a suit against the respondent, claimed that they had advanced money on mortgage relying on statements in certified extracts from the Rent Roll of "quit and ground rent" land kept in accordance with the provisions of the said Act in the office of the Collector of Bombay to the effect that the land was of "quit and ground rent," and not of "Sanadi" tenure, and therefore not liable to be resumed by the Government: *Held*, that the respondent was not estopped by such certified extracts from treating the land as being of "Sanadi" tenure, and liable to resumption. MERWANJI MUNCHERJI CAMA *v.* SECRETARY OF STATE FOR INDIA (1915)

I. L. R. 39 Bom. 664

BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876)—*concld.*

——— **s. 30**—*concld.*

BOMBAY LAND REVENUE CODE (BOM. V OF 1879).

——— **ss. 68, 73—**

See KASBATIS . **I. L. R 39 Bom. 625**

BOND.

See MORTGAGE . **I. L. R. 37 All. 426**

——— **for appearance—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 90, 501 AND 537.

I. L. R. 38 Mad. 1088

——— *Slavery bond—Public policy—Overwhelming interest.* Where in a bond the executant bound himself down to daily attendance and manual labour until a certain sum was repaid in a certain month, and it penalised default with overwhelming interest: *Held*, that such a bond was not enforceable at law being opposed to public policy. RAM SARUP BHAGAT *v.* BANSI MANDAR (1915)

I. L. R. 42 Calc. 742

BONUS.

——— **stipulation for—**

See PATNI LEASE.

I. L. R. 42 Calc. 1029

BOUGHT AND SOLD NOTES.

See SALE OF GOODS.

I. L. R. 42 Calc. 1050

BREACH OF CONTRACT.

See CONTRACT . **I. L. R. 38 Mad. 791**

——— **procuring of—**

See MARRIAGE, CONTRACT OF.
I. L. R. 39 Bom. 682

BREACH OF TRUST.

See TRUSTEE . **I. L. R. 38 Mad. 71**

BROKER.

——— **personal liability of—**

See SALE OF GOODS.
I. L. R. 42 Calc. 1050

BUNDELKHAND ALIENATION ACT (U.P. II OF 1903).

——— **s. 3—**

1. ——— *Agricultural tribe —Suit for pre-emption—Sanction.* The sanction contemplated in section 3 of the Bundelkhand Alienation of Land Act, 1903, applies to a voluntary transfer, and there is no provision in the Act which entitles an intending pre-emptor to get the sanction of the Collector to bring a suit for pre-emption. Therefore a Court is not entitled to grant a decree for pre-emption to a person who is not entitled to purchase the property in question not being a member of the agricultural tribe within the meaning of section 3 of the Bundelkhand Alienation of Land Act. SURAJ BHAN *v.* SOMWARPURI (1915) . . **I. L. R. 37 All. 662**

2. ——— *Equity of redemption sold and pre-empted—Sale of mortgagor's rights—Rights of purchaser.* The policy of the Bundelkhand Land Alienation Act is to prevent persons who are not members of an agricultural tribe from acquiring property and the provisions of section 3 apply to all permanent alienations even though they are brought about by the exercise of the right of pre-emption. Property in Bundelkhand was mortgaged and subsequently the equity of redemption was sold by the owners to a certain person from whom it was pre-empted. The Collector, however, did not sanction the sale but ordered the name of the purchaser to be recorded as a usufructuary mortgagee. Later, the mortgagors sold this very property to the plaintiff. He brought this suit to redeem it from the defendant who was in possession as a prior mortgagee. *Held*, that the plaintiff had a right to redeem the property from the defendant inasmuch as the ultimate right of redemption remained in the representatives of the original mortgagor. This right they were entitled to transfer to the plaintiff. RAM NATH *v.* HARANI (1915)
I. L. R. 37 All. 467

BURDEN OF PROOF.

See AGRA TENANCY ACT (II OF 1901), S. 164 . . **I. L. R. 37 All. 595**

See LIMITATION ACT (IX OF 1908), ARTS. 142, 144 . **I. L. R. 39 Bom. 335**

See ONUS OF PROOF.

See PENAL CODE ACT (XLV OF 1860), S. 456 . . **I. L. R. 37 All. 395**

C

CALCUTTA MUNICIPAL ACT (BENG. III OF 1899).

——— **ss. 223, 228—**

See RATES AND TAXES.
I. L. R. 42 Calc. 625

——— **ss. 343, 442—** *Notice for removal of dilapidated hut belonging to tenant if can be served on the landlord.* The definition of owner of land as given in s. 3, sub-s. (*32*), includes both the landlord and the tenant and a notice under s. 343 for the removal of a hut belonging to the tenant can be served upon the person who is the owner of the land and such person having had a notice served upon him is liable to comply with the terms thereof. S. 442 of the Act which contemplates a different set of circumstances does not in any manner abridge the power conferred by s. 343. CORPORATION OF CALCUTTA *v.* MONMOTHA NATH SETT (1914) . . . **19 C. W. N. 391**

CANCELLATION OF ORDER.

See PROBATE AND ADMINISTRATION ACT (V OF 1881), S. 50.
I. L. R. 37 All. 380

CAPITAL CASES.

See PUBLIC PROSECUTOR, DUTY OF.
I. L. R. 42 Calc. 422

CARE AND PRUDENCE.

——— **degree of—**

See TRUSTEE . **I. L. R. 38 Mad. 71**

CARGO.

See CONFISCATION.
I. L. R. 42 Calc. 334

CASTE.

See HINDU LAW—MARRIAGE.
I. L. R. 39 Bom. 538

CASTE QUESTION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 97 . **I. L. R. 39 Bom. 339**

CAUSE OF ACTION.

See ARREST OF SHIP.
I. L. R. 42 Calc. 85

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11, EXPL. IV, O. II, R. 2.
I. L. R. 39 Bom. 138

See CIVIL PROCEDURE CODE (1908), S. 20 (*c*) . . **I. L. R. 37 All. 189**

See HINDU LAW—WILL.
I. L. R. 42 Calc. 561

See HINDU LAW—WILL.
I. L. R. 37 All. 422

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS 91 AND 120.
I. L. R. 37 All. 640

CAUSE OF ACTION—*concld.*

See MADRAS ESTATES LAND ACT (I OF 1908), S. 192 . **I. L. R. 38 Mad. 655**

See MADRAS LAND ENCROACHMENT ACT (III OF 1905), SS. 3, 5, 14. **I. L. R. 38 Mad. 674**

See TRADE MARK. **I. L. R. 37 All. 446**

——— **for mesne profits—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, RR. 2 AND 4. **I. L. R. 38 Mad. 829**

——— **for possession of land—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, RR. 2 AND 4. **I. L. R. 38 Mad. 829**

——— **for return of purchase money on dispossession—**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 62 AND 97. **I. L. R. 38 Mad. 887**

——— **survival against insolvent defendant—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXII, R. 10. **I. L. R. 39 Bom. 568**

CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881).

——— **ss. 83, 72, 68**—*Suit to correct an entry in record-of-rights if a suit under s. 83—Limitation—Limitation Act (IX of 1908), Art. 120.* In a record-of-rights prepared under Chap. VI of the Central Provinces Land Revenue Act, the appellants were described as "*shikmi gaontias*" or permanent tenants under plaintiffs. The plaintiffs sued to have the entry amended so that the appellants might be described as mortgagees and not as permanent tenants. *Held*, that the suit was within s. 83 of the Act and a suit under that section is not governed by Art. 14, but by Art. 120 of the Limitation Act. Where the defendants having been recorded as "*shikmi gaontias*," the plaintiffs, *gaontias*, sued for a declaration that they were in possession as mortgagees only: *Held*, that the Settlement Officer acted either under s. 68 or under s. 72 of the Act, so that the Court had jurisdiction to entertain the suit under s. 83. NABAGHAN BADHAI *v.* RAGUNATH BABU (1915) . . . . **19 C. W. N. 1303**

CERTIFIED COPY.

——— **filing of—**

See APPEAL . **I. L. R. 42 Calc. 433**

CHARGE.

See CO-OPERATIVE SOCIETY. **I. L. R. 42 Calc. 377**

See DEBT . **I. L. R. 42 Calc. 849**

CHARGE—*contd.*

See RAILWAY RECEIPT. **I. L. R. 38 Mad. 664**

See RATES AND TAXES. **I. L. R. 42 Calc. 625**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 82 . **I. L. R. 37 All. 101**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 118 TO 120, 54 AND 55, CL. 6 (*b*) . . **I. L. R. 38 Mad. 519**

1. ——— *Explosive Substances Act, 1883 (46 & 47 Vict. c. 3), s. 4—Explosive Substances Act (VI of 1908), s. 4 (b)—Charge, specifications of—Accused's right to know value thereof—Penal Code (Act XLV of 1860 as amended by Act VIII of 1913), ss. 120, 120A, 120B, 121A—"Explosive Substance"—"By means thereof"—"Unlawfully and malaciously"—"Criminal conspiracy"—Misjoinder of charges—Criminal Procedure Code (Act V of 1898), ss. 196, 235, 342, 360 (1), 417—"Same transaction," limits of—Joinder of charges under s. 4 (b) of Act VI of 1908 and s. 120 B of the Penal Code—Co-conspirators, separate trial of—Crown's right to prosecute irrespective of the question of ultimate design—"Presumption of innocence" of accused, meaning of—Conspiracy, charge of—Prosecution, duty of—Explanation by accused,—Want of, when fatal—Leading questions—Cross-examination of its own witnesses by prosecution, when permissible—Evidence Act (I of 1872), ss. 10, 14, 15, 54, 135, 143, 154—Official witnesses for Crown whether privileged from disclosing source of information—Detective, whether so privileged regarding place of secretion—Written statements of accused—Examination of accused—Comparison of handwriting by Court, propriety of—"Possession," meaning of—Depositions, reading over of, daily in open Court.* An accued is entitled to know with certainty and accuracy the exact value of the charge brought against him. But where the accused fully understood the nature of the offence with which they were charged, they had clearly not been prejudiced by the omission of the words "unlawfully and maliciously" and "in British India" occurring in section 4 (*b*) of Act VI of 1908. Such an omission can be cured by the verdict. *The Queen* v. *Munslow*, *[1895] 1 Q. B. 758*, referred to. Where the illegal act charged under section 120 B is the unlawful and malicious possession of explosive substances within the meaning of section 4 of the Explosive Substances Act, 1908, it is not essential to specify in the charge the explosive substance which the accused have conspired to have in their possession or under their control. A person may be guilty of criminal conspiracy even though the illegal act, which he has agreed to do, has not been done, for "the crime of conspiracy consists only in the agreement or confederacy to do an illegal act by legal means or a legal act by illegal means." *Reg.* v. *Hibbert, 13 Cox 82, Quinn* v. *Leathem, [1901] A. C. 495, The Queen* v. *Most, 7 Q. B. D. 244 : 14 Cox. 583*, and *O'Connell* v. *The Queen, 11 Cl. & F. 155 ; 1 Cox. 413 ; 5 St. Tr. N. S. 1*, referred to. The indictment in all cases of conspir-

CHARGE—*contd.*

acy must in the first place charge the conspiracy, but in stating the object of the conspiracy the same degree of certainty is not required as in an indictment for the offence conspired to be committed. *The King* v. *Gill, 2 B. & Ald. 204, The Queen* v. *Kenrick, 5 Q. B. 49, The Queen* v. *Blake, 6 Q. B. 126, Sydserff* v. *The Queen, 11 Q. B. 245, The Queen* v. *Gompertz, 9 Q. B. 824 ; 2 Cox. 145, Aspinall* v. *The Queen, 2 Q. B. D. 48, Taylor* v. *The Queen, [1895] 1 Q. B. 25, Reg.* v. *Parker, 3 Q. B. 292*, referred to. It is a wholesome rule that the Court should adhere to the language of the statute, as far as practicable, when a charge is drawn up ; as nothing is gained by a paraphrase, while opportunity is afforded to the accused to take exception to the form of the charge. The accused cannot be convicted on a conspiracy charge under section 120 B, Indian Penal Code, unless the prosecution establishes that the accused were members of the conspiracy after the 27th March 1913 when Act VIII of 1913 became law. A comprehensive formula of universal application cannot be framed regarding the question whether two or more acts constitute the "*same transaction*" ; the circumstances which must bear on its determination in each individual case are proximity of time, unity or proximity of place, continuity of action, and community of purpose or design. If A, B and C conspire to make, or have in their possession or under their control, an explosive substance within the meaning of the Explosive Substances Act, and, if in pursuance of such conspiracy A makes or has in his possession or under his control an explosive substance, they may, if the Court thinks fit, be charged and tried together under section 120 B, Indian Penal Code, and section 4 (*b*) of Act VI of 1908. If all the *known* co-conspirators named in the charge are not placed on their trial, the trial of some (separately) without the others is not vitiated. *Emperor* v. *Lalit Mohan Chuckerbutty, I. L. R. 38 Calc., 559 ; 15 C. W. N. 593*, explained. If the accused have committed an offence under section 4 (*b*) of the Explosive Substances Act, 1908, in pursuance of a criminal conspiracy, it is open to the Crown to prosecute them for such offences, irrespective of the question of the ultimate design of the alleged conspiracy coming under section 121A, Indian Penal Code (which charge requires previous sanction under section 196, Criminal Procedure Code). In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. *R.* v. *Hodge, 2 Lewin C. C. 277*, referred to. The presumption of innocence (in criminal cases) signifies no more than this that if the commission of a crime is directly in issue in any proceeding it must be proved beyond reasonable doubt. "The whole doctrine when drawn out is, *first*, that a person who is charged with a crime must be *proved* guilty, that according to the ordinary rule of procedure and of legal reasoning *praesumitur pro reo, i.e., neganti*, so that the accused stands innocent until he is proved guilty ; and *secondly*, that this proof of guilt must, displace all

CHARGE—*contd.*

reasonable doubt." In a charge of conspiracy general evidence of the existence of the conspiracy may first be given, before particular facts are proved to show that one or more of the accused took part in it. *R.* v. *Sidney, 9 St. Tr. 817, Queen Caroline's Case, 2 B. & B. 284 ; 1 St. Tr. N. S. 1348, R.* v. *Hunt, 3 B. & Ald. 566*, followed. Under the law in England facts similar, but not part of the same transaction as the main fact, are not in general admissible to prove either the occurrence of the main fact or the identity of its author except (after evidence *aliunde* on these points has been given) to show the state of mind of the parties with regard to such fact, *i.e.*, knowledge of its nature, or his intent. In general, whenever it is necessary to rebut even by anticipation, the defence of accident, mistake or other innocent condition of mind, evidence that the accused has been concerned in a systematic course of conduct of the same specific kind as, and proximate in point of time to that in question, may be given. *R.* v. *Holt, (1860) Bell. 280 : 8 Cox. 411*, to the contrary is no longer authority. *R.* v. *Smith, 20 Cox. 804 ; 92 L. T. 208*, and *Emperor* v. *Debendra Prosad, I. L. R. 36 Calc. 573 ; 9 C. L. J. 610*, referred to. Section 4 of Act VI of 1908 substantially reproduces the provisions of section 3 of 46 and 47 Vict. Chap. 3 (Explosive Substances Act, 1883), consequently the expression "*unlawfully and maliciously*" may be interpreted in the sense in which it is familiarly used in the criminal law of England. "*Unlawfully*" thus signifies "not for a lawful object," and "*maliciously*" signifies "intentionally and without justification or excuse or claim of right." *The Queen* v. *Clemens, [1898] 1 Q. B. 556 ; 19 Cox. 18, Miles* v. *Hutchins, [1903] 2 K. B. 714 ; 20 Cox. 555*, referred to. *Reg.* v. *Ward, 12 Cox. 123 ; 1 C. C. R. 356, McPherson* v. *Daniels, 10 B. & C. 272, Bromage* v. *Prosser, 4 B. & C. 247, Clark* v. *Molyneux, 3 Q. B. D. 237, Allen* v. *Flood, [1898] A. C. 1, Johnson* v. *Emerson, L. R. 6 Ex. Ch. 373, R.* v. *Pembleton, 2 C. C. R. 119 ; 12 Cox. 607, Mogul Steamship Co.* v. *McGregor, [1892] A. C. 25 ; 23 Q. B. D. 598*, followed. The term "explosive substance" as used in section 4 (*b*) of Act VI of 1908 includes *any part* of an apparatus, machine, or implement intended to be used or adapted for causing or aiding in causing any explosive substance, and "by means thereof" does not mean by means thereof *alone*. *R.* v. *Charles, 17 Cox. 499*, referred to. The inference of fact may legitimately be drawn that the "explosive substances" made and possessed by Sasanka were intended for *use in British India*. It is the duty of the prosecution, not so much to secure a conviction as to place all the available evidence in the case fairly and fully before the tribunal by which alone the guilt or innocence of the accused is to be determined. *Ram Ranjan Roy* v. *King-Emperor, I. L. R. 42 Calc. 422 ; 19 C. W. N. 28*, following *Regina* v. *Holden, 8 C. & P. 606*, referred to. "The proof of the case against the prisoner must depend for its support not upon the absence or want of any explanation on the part of the prisoner, but upon the positive affirmative evidence of his guilt that

CHARGE—*contd.*

is given by the Crown." But " if there is a certain appearance made out against a party, if he is involved by the evidence in a state of considerable suspicion, he is called upon, for his own sake and his own safety, to state and to bring forward the circumstances, whatever they may be, which might reconcile such suspicious appearances with perfect innocence." *Regina* v. *Frost, 4 St. Tr. N. S. 85*, followed. While it is not necessary to prove manual possession of the explosive substance by the accused, it must be proved that it was in his power or control : *possession* to be punishable must also be possession with knowledge and assent. The mere fact that the other accused were in the room does not show they were in possession of all or any of the things contained therein. When the evidence at the disposal of the prosecution is insufficient to secure a conviction for the crime committed, it is inexpedient, even though it may be lawful, to prosecute the accused for a conspiracy the proof whereof really rests on the establishment of that very crime. *Reg.* v. *Boulton, 12 Cox. 87*, and *Emperor* v. *Lalit Mohan, I. L. R. 38 Calc. 559 ; 15 C. W. N. 593*, referred to. A man's guilt is to be established by proof of the facts alleged and not by proof of his character ; such evidence might create a prejudice but not lead a step towards substantiation of guilt. In India, as in England, the accused are entitled in cross-examination to elicit facts in support of their defence from the prosecution witnesses wholly unconnected with the examination-in-chief. In the course of cross-examination of this character the defence are entitled, in view of the generality of section 143 of the Indian Evidence Act, to ask leading questions. Under section 154, the Court has the discretion to permit the prosecution to test, by way of cross-examination, the veracity of their own witnesses with regard to the (unconnected) matters elicited by the defence in cross-examination. [While in the United States a party has no right to cross-examine any witness, except as to circumstances connected with matters stated in his examination-in-chief, and if he wishes to examine him respecting other matters he must do so by making him his own witness and by calling him as such in the subsequent progress of the cause. *Philadelphia and Trenton Railway Co.* v. *Stimpson, 14 Peter 448*, referred to.] The defence is not entitled to elicit from individual prosecution witnesses whether he was a spy or an informer, or to discover from police officials the names of persons from whom they had received information ; but a detective cannot refuse, on grounds of public policy, to answer a question as to where he was secreted. *R.* v. *Watson, 32 St. Tr. 1, R.* v. *Richardson, 3 Fos. & Fin. 693, A.-G.* v. *Bryant, 15 M. & W. 169 ; 71 R. R. 610, Marks* v. *Beyfus, 25 Q. B. D. 494, Webb* v. *Catchlove, 3 T. L. R. 159*, referred to. In strictly carrying out the provisions of section 360 (*1*) of the Criminal Procedure Code by the daily reading over in open Court of the deposition of each witness, the Court does not lay itself open to criticism, though that procedure should occupy considerable time. *Mohendra Nath* v. *Emperor, 12 C. W. N. 845,*

CHARGE—*concld.*

Jyotish Chandra Mukerjee v. *Emperor, I. L. R. 36 Calc. 955*, and *Kamatchinathan* v. *Emperor, I. L. R. 28 Mad. 308*, referred to. Though written statements may be accepted from the accused in accordance with the universal practice in the Courts under the Calcutta High Court, they do not take the place of evidence nor of such examination of the accused as is contemplated by section 342 of the Code of Criminal Procedure. *Emperor* v. *Ansuiya, (1903) All. W. N. 1*, dissented from. AMRITA LAL HAZRA *v.* EMPEROR (1915) . . **I. L. R. 42 Calc. 957**

2 ——— *Annuity—Charge on movable as well as immovable property—Sale of property charged in separate lots—Notice of charge to purchasers.* Movable property, at all events movable property which is not perishable or necessarily consumed by use, may be effectively charged with the payment of an annuity and may be sold subject to the charge even in execution of a decree for arrears of the annuity. *Sahib Mirza* v. *Umda Khanam, I. L. R. 19 Calc. 444*, followed. Where, however, an annuitant, in execution of a decree which he had obtained for arrears of an annuity, attached and sold part of such movable property without notice of the charge and the nature of the property was such that it was of no particular value apart from other property which was sold separately : *Held*, that such part must be taken to have been sold free of the charge. GANESH v. BABU RAM (1914) . . **I. L. R. 37 All. 72**

CHARTER ACT (24 & 25 VICT. C. 104).

——— **cl. 15—**

See JURISDICTION.

I. L. R. 42 Calc. 926

See MADRAS CITY MUNICIPAL ACT (III OF 1904) . . **I. L. R. 38 Mad. 581**

CHARTER OF THE SUPREME COURT, 1774.

——— **cl. 26—**

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

CHATTELS.

See PALAS OR TURNS OF WORSHIP.

I. L. R. 42 Calc. 455

CHAUKIDARI CHAKRAN LANDS.

1. ——— *Village Chaukidari Act (Beng. VI of 1870), s s 1, 48, 49, 50, 51, 52, 58—Power of resumption and assessment of chaukidari chakran lands—Zamindari esates in Orissa—Regulation XII of 1805, s. 33—Regulation XIII of 1805, s. 41—Regulation I of 1793, s. 8, cl. (4)—Onus of proof.* In these appeals, the Judicial Committee (affirming the decision of the High Court) *held*, on a consideration of the history of Orissa, and of the legislation applicable to its settlement, and the nature of its zamindari estates, that the Government were, under the circumstances, not entitled to resume and assess with revenue, as being chaukidari chakran lands within the meaning of the Village Chaukidari Act (Bengal

CHAUKIDARI CHAKRAN LANDS—*contd.*

Act VI of 1870) certain lands forming part of the estates of the respondents (the zamindars of Sukinda and Madhupur) in Orissa, with whose ancestors settlements had been made in 1803, and sanads granted by which statutory confirmation was given by section 33 of Bengal Regulation XII of 1805, and in respect of which estates the revenue was settled in perpetuity. The history of chaukidari grants as set out in the judgment of Lord Kingsdown in the case of *Joykishen Mookerjee* v. *Collector of East Burdwan, 10 Moo. I. A. 16,* referred to. The respondents in discharge of the duties imposed on them by their sanads to maintain peace and order within their estates (the manner in which they were to carry out such duties being impliedly left by the Government to the zamindars, as there was no machinery provided for the purpose in the legislation previous to 1870) retained in their service a large number of chaukidars whom, according to the custom of the country, they remunerated by grants of land in lieu of wages. A register of these chaukidars was kept in the zamindari office, and in the appointment of the chaukidars, in more than one instance, the Government Police Officer had a voice. But the records showed that the zamindars often changed the lands held by these men, and resumed what they considered to be in excess of their requirements. Bengal Act VI of 1870 was extended to Orissa in 1879. In suits by the respondents against the Secretary of State for a declaration that the Act did not apply to the lands in question: *Held* that the onus was on the appellants to show that when the zamindaries were confirmed to the respondents' ancestors, such confirmation was subject to reservations in respect of any land which gave the Government the power of resuming and assessing it, and that onus had not been discharged. The power of resumption was reserved by Government in the old Regulations in respect of lands which had been set apart by the zamindar with their permission or under their authority. In Regulation I of 1793 the word used is "appropriated"; in Regulation XIII of 1805 the expression "assigned" is employed: but in both statutes the characteristics of the grants under which the lands were held depended on the implied authorisation of the Government, which excluded them from consideration in the adjustment of the jama of the mahal. In the present cases the appellant had failed to show that any parcel of land was not taken into account in fixing the rent respectively payable by the respondents, nor that there was any obligation on the part of the respondents to make such grants. The only obligation on them was to maintain peace and order within their zamindaries. They entertained the services of chaukidars for whose maintenance they allotted from time to time certain lands of their own free will. The mere fact that some appointments were made with the approval of a Government official could not alter the nature of the grants. The word "assigned" in the definition section of Bengal Act VI of 1870 means land assigned by Government, or appropriated under their authority or with their permission.

CHAUKIDARI CHAKRAN LANDS—*concld.*

Not only did the form of the "transferring order" in Schedule C of the Act clearly show that the expression "assigned" is applied to lands assigned by Government for the maintenance of the chaukidars, and in respect of which they reserved the right to resume and transfer to the zamindar subject to an additional assessment, but the resolution by which the Act was extended to Orissa leaves no possibility of doubt what the Government understood the Act to mean. In the orders passed a distinction is made with regard to chaukidari holdings in the temporarily-settled tracts and those situated in "permanently-settled estates." With regard to these it is declared that on resumption "the holdings should be included in the estates within which they lie, and form part of its assets in the future." Nothing can be clearer that the Act was designed to deal with lands which, although lying within a mahal, did not form part of its assets, which was not the case with the respondents' zamindaries. SECRETARY OF STATE FOR INDIA *v.* KIRTIBAS BHUPATI HARICHANDAN MAHAPATRA (1914)

I. L. R. 42 Calc. 710

2. ——— *Suit for khas possession—Chaukidari chakran lands—Resumption by Government and settlement with private individual—Holding over by tenant without settlement from such private individual.* The plaintiffs sued to obtain *khas* possession of three plots of land and for damages and in the alternative for a decree declaring that the defendants were bound to pay rent and for assessment of adequate rent. The lands in suit were formerly chakran lands which were resumed by Government and settled with plaintiff's vendor on 7th September 1898. The plaintiff obtained his title to the lands by purchase of his vendor's interest at an auction sale in execution of a decree in 1907 or 1908. The defendants who held the lands as chaukidari chakran lands at the time of the resumption continued to hold them ever since without taking any settlement either from the plaintiff's vendor or the plaintiff. In 1902 the plaintiff's vendor sued the defendants in the Small Cause Court for compensation for use and occupation and obtained decrees against them. The plaintiff brought his suit on the 10th September 1909. *Held,* that once the chakran lands were resumed and settled with the plaintiff's predecessor the latter had the right to take *khas* possession of the lands and the mere omission of the plaintiff's predecessor and of the plaintiff after him to assert that right would not amount to acquiescence on the part of the plaintiff which would alter the status of the defendants from that of trespassers to that of tenants and the plaintiff was entitled to bring his suit within 12 years from the date of resumption by Government and settlement with the plaintiff's vendor. RAJ KRISHNA RUDRA *v.* PHAKIR DOME (1913)

19 C. W. N. 478

CHEQUE, PAYMENT BY.

——— *Effect of such payment—Part-payment—Limitation—Limitation Act (IX of 1908), s. 20—Continuous account.* If a

CHEQUE, PAYMENT BY——*concld.*

cheque is delivered to a payee by way of payment and is received as such, it operates as a payment subject to a condition subsequent that if upon due presentation the cheque is not paid, the original debt revives. Where such a cheque is signed by the debtor and paid in part-payment of the principal of a debt, the cheque being subsequently honoured, the proviso to s. 20 of the Limitation Act has been complied with. *Mackenzie* v. *Tiruvengadathan, I. L. R. 9 Mad. 271*, distinguished. Where the dealings between two parties give rise to a continuous account, the whole forms one cause of action. *Bonsey* v. *Wordsworth, 18 C. B. 325*, followed. KEDAR NATH MITRA *v.* DINABANDHU SAHA (1915) . **I. L. R. 42 Calc. 1043**

CHOTA NAGPUR ENCUMBERED ESTATES ACT (BENG. VI OF 1876).

——— **s. 3**—*Deed of release executed by disqualified proprietor.* A deed of release executed by a proprietor at a time when his estate was managed under the Chota Nagpur Encumbered Estates Act, Beng. VI of 1876, cannot be operative, as the proprietor was wholly incompetent to make any such disposition of his property. It was not a case of a merely voidable agreement. An admission to that effect in a *chhar sanad* (which did not operate as an alienation) granted by the disqualified proprietor did not bind the estate even as an admission. BISWANATH GORAIN *v.* SURENDRA MOHAN GHOSH (1913) . **19 C. W. N. 102**

——— **s. 17**—

See PATNI LEASE.

I. L. R. 42 Calc. 1029

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879).

——— **s. 47**— *Suit for rent—Plaint not specifying property in arrears—Tenure, if may be sold without amending plaint —Order of High Court to amend plaint if under Civil Procedure Code (Act V of 1908), O. VI, r. 18—Decree, if should be amended—Remand order directing trial by specific Court—Another Court having jurisdiction, if may try.* Where in a suit for rent governed by the Chota Nagpur Landlord and Tenant Procedure Act of 1879 the plaint did not specify correctly the property in respect of which the rent was due as required by s. 47 of the Act, and the sale proclamation issued in execution of the decree passed in the suit (which by force of s. 5 of the Bengal Rent Recovery Act of 1865 would specify the property in the words of the plaint) was in consequence found to be defective by the High Court on an appeal preferred to it in execution proceedings and the High Court by its order, dated 13th March 1913, acting on the agreement of the parties directed that the description in the plaint should be amended, the plaintiff being given liberty to submit a correct description, and further that the " Court that tried the original suit " should adjudicate upon the matter in case of controversy, but on remand, the Deputy Commissioner, and not the

CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879)—*contd.*

——— **s. 47**—*concld.*

Deputy Collector who tried the original suit, caused the plaint to be amended on the 17th May 1913 : *Held*, that r. 18 of O. VI of the Civil Procedure Code did not apply to the matter as the order of the High Court directing amendment was not made under O. VI, but under the power of the Court to order that certain steps should be taken by the parties to enable the differences between them to be properly settled, and the amendment made was not out of time. That although the Deputy Commissioner had general jurisdiction over the case under the High Court's order the Deputy Collector and not he had power to deal with the matter and his order should be set aside. That the objection on the part of the judgment-debtor that it was the decree and not the plaint that was to be amended, though it would have been a valid objection if the case was under the general law, under the special provisions of s. 5 of the Rent Recovery Act there was no necessity for amending the decree. MADAN MOHAN NATH SAHI *v.* PRATAP UDAI NATH SAHI DEO (1914) . . . . **19 C. W. N. 200**

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908).

——— **s. 11**—*Registration of transferee of tenure in landlord's office, condition precedent to suit for rent—Record-of-rights, transferee's name recorded in, if substitute for registration.* The granting by the Settlement Department of a copy of a *khewat* containing the name of a certain person as the holder of a tenure is not equivalent to registration in the office of the landlord of the transfer of the tenure to that person as contemplated by s. 11 of the Chota Nagpur Tenancy Act. ANGNU GHASI *v.* CHUTHU PATRAS (1914)

19 C. W. N. 461

——— **ss. 20** (*3*), **139** (*6*)— *Occupancy-right acquired before Act, if affected.* When a suit relates to agricultural lands and is instituted by the headman of a village in his character as headman, cl. (*6*) of s. 139 of the Chota Nagpur Tenancy Act operates as a bar. Section 20, cl. (*3*), of the Chota Nagpur Tenancy Act of 1908 does not affect occupancy rights acquired before that Act came into force. Under Act X of 1859 which applied in 1867 when the land in suit was reclaimed, occupancy right could be acquired by raiyats who occupied the land for a period of 12 years, cultivated the same and paid rent therefor as rayats. DURGA PROSAD SINGH *v.* HARI RAM MAHATO (1914)

19 C. W. N. 578

——— **ss. 87, 258, 265 (viii)**—*Judicial Commissioner hearing appeals in cases under s. 87, if Revenue Officer—Order not modifiable by suit in Civil Court—Order to what extent res judicata—Civil Procedure Code (Act V of 1908), s. 11.* R having been entered in the record-of-rights (prepared under s. 83 of the Chota Nagpur Tenancy Act) holding Pargana Barway as a *jagir* descendible to children, the Maharaja of Chota Nagpur sued

CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908)—*concld.*

——— **s. 87**—*concld.*

him under s. 87 to have the entry amended and altered to a life-*jagir*. The Revenue Officer dismissed the suit, but it was decreed by the Judicial Commissioner who had been appointed by the Local Government under s. 264 (viii) of the Act as Special Officer for hearing appeals from decisions of Revenue Officers under s. 87 of the Act. R thereafter brought this suit against the Maharaja in the Civil Court for a declaration that Pargana Barway was the hereditary impartible estate of the family of the plaintiff: *Held*, that the Judicial Commissioner by virtue of his appointment under s. 264 (viii) performed the functions of a "Revenue Officer" within the meaning of s. 258 of the Act in disposing of appeals from decisions of Revenue Officers under s. 87. That a simple declaration of the nature of the tenure was within the competence of a Revenue Court acting under s. 87 of the Act and therefore the decision of the Judicial Commissioner was a bar to the trial of the present suit which was a suit only for such a declaration. That although R could not seek to vary or set aside the order of the Revenue Court under s. 87, he could, being in possession, defend his title in a suit for resumption of the tenure brought by the Maharaja. GANESH NARAIN SAHI DEO *v.* PROTAP UDAI NATH SAHI DEO (1915) **19 C. W. N. 998**

CHUKANI RIGHT.

——— *Contract of sale of a chukani tenure—Misrepresentation by non-disclosure of facts—Suit for rescission by purchaser—Transfer of Property Act (IV of 1882), s. 55—Duty of seller.* A *chukani* tenure in the District of Rungpur is not a temporary tenure under the Transfer of Property Act terminable at six months' notice but a *raiyati* leasehold which may develop into occupancy right. When the vendor is informed by the purchaser of his object in buying certain property and the lease contains covenants which will defeat that object, mere silence will, in equity, be equivalent to misrepresentation. *Flight* v. *Barton*, 3 My. & K. 282, followed. JOGENDRA NATH GOSWAMI *v.* CHANDRA KUMAR MOZUMDAR (1914) . **I. L. R. 42 Calc. 28**

CHUR LAND.

——— *Thak and Survey maps—Consent decree in previous suit—Decree not inter parties—Constructive possession of owner of submerged lands during diluvion—Adverse possession—Limitation.* The plaintiffs sued for declaration of their title to certain Chur lands which they alleged were partly reformations on the site of and partly accretions to three Mauzas. The Churs were measured in the course of Thak proceedings in the year 1859 and were subsequently measured by way of survey during the following year. The plaintiffs based their title to the disputed land on the Thak map of 1859, the Survey map of 1860, and a consent decree passed in 1879 in a suit instituted by the predecessors-in-interest of the plaintiffs against persons represented by the

CHUR LAND—*concld.*

defendants in consequence of a dispute about the possession of some of the lands of these Churs. *Held*, on the evidence, that the consent decree was as binding on the parties as a decree after a contentious trial, but it cannot have greater validity than the compromise itself: *Held*, on the evidence, that the proceedings in the suit of 1879 were not *bonâ fide*; that the compromise was entered into without authority from the defendants, and that it was not established that the defendants, even though apprised of the compromise, had acquiesced in it. That the rights of property as between two parties cannot be affected by a map drawn for a different purpose —a purpose not relevant to the subject of the dispute between them. That the location of the boundary in the map prepared in the suit of 1879 could not be treated as conclusive between the parties for the purposes of the present controversy, inasmuch as it was not necessary for the disposal of that suit and was outside its scope. *Kerr* v. *Nuzzur Mahamed*, *2 W. R. P. C. 28*, *Kanto Prashad* v. *Jagat Chandra*, *I. L. R. 23 Calc. 335*, *Ranjit Sinha* v. *Basanta Kumar*, *9 C. L. J. 597*, *Preo Nath* v. *Durga Tarini*, *14 C. L. J. 578*, and *Shib Churn* v. *Nil Kantha*, *17 C. L. J. 642*, relied on. No hard and fast rule can be laid down that a Survey map is more reliable than a Thak map. The true principle is that the map which more clearly agrees with the local land-marks is the one that should be followed. That as the Thak map was made in the presence of the parties or their agents, it was *primâ facie* binding on them and in the circumstances of the present case the decree should be based not on the Survey map but on the Thak map after it has been relaid with as much accuracy as practicable. That as the rightful owners must be deemed in law to have been in possession of the submerged lands during the period of diluvion, for the purpose of deciding the question of limitation, the only point for investigation was the period of time when the lands re-appeared and became fit for occupation; and as the possession of the defendants after reformation of the disputed lands did not extend over the statutory period, the claim of the plaintiffs was not barred by limitation in respect of lands which lay within the Thak boundaries of their Churs. That as regards the plaintiffs' claim by adverse possession to land lying beyond the Thak boundaries of their Churs, the plaintiffs were bound to establish in respect of specific parcels of land that they have been in occupation thereof to the exclusion of the rightful owner continuously for a period of twelve years, for the theory of constructive possession is applied only in favour of a rightful owner and is not extended in favour of a wrong-doer whose possession is treated as confined to land of which he is actually in possession. AMRITA SUNDARI DEBI *v.* SERAJUDDIN AHMED (1914) . . **19 C. W. N. 565**

CIVIL AND REVENUE COURTS.

——— **jurisdiction of—**

See AGRA TENANCY ACT (II OF 1901), SS. 4 AND 19 . **I. L. R. 37 All. 280**

CIVIL AND REVENUE COURTS—*concld.*

See AGRA TENANCY ACT (II OF 1901), S. 95 **I. L. R. 37 All. 223**

See AGRA TENANCY ACT (II OF 1901), SS. 95 AND 167 . **I. L. R. 37 All. 41**

See AGRA TENANCY ACT (II OF 1901), S. 167 . . **I. L. R. 37 All. 254**

CIVIL COURT.

See PENSIONS ACT (XXIII OF 1871), SS. 4, 5, 6 . . **I. L. R. 37 All. 338**

CIVIL COURTS ACT (XII OF 1887).

——— **ss. 8, sub-s. (2), 22, sub-s. (2)—**

See TRANSFER . **I. L. R. 42 Calc. 842**

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

——— *Execution of decree—Attachment, withdrawal of—Striking-off of execution case—Alienation.* In execution of a decree passed against H, his property was attached under Act XIV of 1882. The application for execution was struck off on default by the decree-holder in the payment of process fees. H then made a gift of the said property in favour of his mother who sold it to the defendants. *Held*, that the attachment must be presumed to have subsisted and the gift was void. DAUD ALI *v.* RAM PRASAD (1915) **I. L. R. 37 All. 542**

——— **ss. 13, 244—**

See RES JUDICATA. **I. L. R. 37 All. 485**

——— **s. 37 (a)—**

See ATTORNEY . **I. L. R. 38 Mad. 134**

——— **s. 244—**

See OCCUPANCY HOLDING. **I. L. R. 42 Calc. 172**

——— **ss. 317 and 231—**

See HINDU LAW—SUCCESSION. **I. L. R. 37 All. 545**

——— **s. 317**—*Co-decree-holder purchasing at execution sale, trustee for other decree-holders—Scope and object of s. 317.* Where one of several joint decree-holders applied for execution of the decee subject to the rights of the others and properties put up to sale in pursuance thereof were purchased by him : *Held*, that the purchase was for the benefit of all the decree-holders and the purchaser could not be allowed to retain the property as his exclusively and perpetrate a fraud against his co-decree-holders under cover of s. 317 of the Civil Procedure Code of 1882. The provisions of s. 317 of the Civil Procedure Code of 1882 were designed to create some check on the practice of making what are called *benami* purchases at execution sales for the benefit of judgment-debtors and in no way affect the title of persons otherwise beneficially interested in the purchase. *Bodh Singh Doodhooria* v. *Gunesh Chunder Sen, 12 B. L. R. 317*, referred to. GANGA SAHAI *v.* KESRI (1915) **19 C. W. N. 1175**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld.*

——— **ss. 351 and 357—**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179 . **I. L. R. 39 Bom. 20**

——— **s. 373**—*Legal representative—Abatement of suit—Withdrawal of suit with permission to bring a fresh one—Its effect on the representative not on record.* When a suit has abated against a defendant by reason of his legal representative not having been brought on the record within the time allowed by law and when the plaintiff thereupon withdraws his suit with permission to bring a fresh one, such a permission can only empower him to bring a fresh suit against those defendants who were on the record on the date of the withdrawal and not against the legal representatives of a defendant who was dead at the time of the withdrawal and whose said representatives had either not been brought on the record or had been removed from the record by an appellate order which set aside the order of the first court bringing them on the record. *Perumal* v. *Karupan, 21 Mad. L. J. 574*, dissented from. SESHAMMA *v.* SURYANARAYANA (1913) **I. L. R. 38 Mad. 643**

——— **s. 583—**

See ASSIGNEE OF A MONEY-DECREE. **I. L. R. 38 Mad. 36**

——— **ss. 626, cl. (b), 629—**

See REVIEW . **I. L. R. 42 Calc. 830**

CIVIL PROCEDURE CODE (ACT V OF 1908).

——— **ss. 2 (2), 96, 104—O. XLIII, r. 1**

See EXECUTION OF DECREE. **I. L. R. 42 Calc. 440**

——— **ss. 2, 97—**

1. ——— *Preliminary decree—Finding on a preliminary issue whether a party is an agriculturist—In what cases is the finding a preliminary decree—Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 13.* The finding on a preliminary issue, whether a party is or is not an agriculturist, can be the basis of a preliminary decree, only when it necessarily involves a conclusive determination of the rights of the parties with regard to the matter in controversy. That is to say, it is a preliminary decree in those cases where it necessarily involves the result that the accounts should be taken under s. 13 of the Dekkhan Agriculturists' Relief Act, 1879, despite the terms of the contract to the contrary. It is not a preliminary decree, when there are other questions yet to be determined before the parties could be held entitled to have accounts taken unde- sec. 13 of the Act. MUNICIPAL COMMITTEE OF NASIK CITY *v.* THE COLLECTOR OF NASIK (1915) **I. L. R. 39 Bom. 422**

2. ——— *Preliminary decree, decision that plaintiff can maintain suit if—Court's refusal to embody its findings in formal decree—Right of appeal.* A decision merely hold-

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 2**—*concld.*

ing that the plaintiff's suit is maintainable is not a preliminary decree. It is not an adjudication on "matters in controversy" in the suit. The intention of the Legislature appears to be that there should be only one preliminary decree in the suit to be followed by one final decree. The preliminary decree ascertains what is to be done whilst the final decree states the result achieved by means of the preliminary decree. The cases in which the Legislature contemplated the preparation of a preliminary decree are specified in rr. 12 to 18 of O. XX of the Civil Procedure Code. *Sidha Nath Dhonddeb* v. *Gonesh Govind, I. L. R. 37 Bom. 60*, dissented from. *Bharut Indu* v. *Yakub Hasan, I. L. R. 35 All. 159*, referred to. The mere omission on the part of the Court to embody the effect of its judgment in a formal decree would not negative the right of the party affected to prefer an appeal. KAMINI DEBI *v.* PROMOTHA NATH MUKERJEE (1914) . . . . **19 C. W. N. 755**

——— **ss. 7, 24—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 24 . **I. L. R. 38 Mad. 25**

——— **s. 9**—*Specific Relief Act (I of 1877), s. 42—Suit for declaration that the plaintiff is the Honorary Secretary of an association—Suit maintainable—Jurisdiction.* Although the fact that an office is of a purely honorary nature is not by itself sufficient to render a suit respecting such office unmaintainable in a Civil Court, yet where a plaintiff complained of his eviction from the office of secretary to a society which was an honorary office and his continuance wherein depended upon rules which the society had power to alter at any moment, it was *held* that a Civil Court ought not to entertain a suit for a declaration that the plaintiff had been illegally deprived of such office, inasmuch as such Court could not give any decree in his favour which might not be immediately rendered nugatory by the action of the society. *Chunnu Datt* v. *Babu Nandan, I. L. R. 32 All. 527*, referred to. MAHARAJ NARAIN SHEOPURI *v.* SHASHI SHEKHARESHWAR ROY (1915) . . . **I. L. R. 37 All. 313**

——— **s. 10—**

See JURISDICTION.
I. L. R. 42 Calc. 926

——— **s. 11—**

See ADOPTION . **I. L. R. 37 All. 496**

See RES JUDICATA.
I. L. R. 38 Mad. 158

1. ——— *Suit for declaration and recovery of possession—Defence of res judicata—Parties not adequately represented in the former suit not fully tried—No bar of res judicata.* A suit brought by three plaintiffs as surviving coparceners of a joint Hindu family for a declaration that the property in suit formed part of the joint family property and for possession was met by the plea of *res judicata*. The previous suit, the decision in which was set up as *res judicata*, was filed in the year 1909 by the father of the present plaintiffs 2 and 3, who were minors and who were not joined as parties, against the present defendants and the present plaintiff 1 as defendant 4. The relief claimed in that suit was the same as that claimed in the present suit. The finding in that suit showed conclusively that the father of the present plaintiffs 2 and 3, who were then minors and were not parties, did not adequately represent them and the suit was not fully tried and the suit was accordingly dismissed. *Held*, that the bar of *res judicata* did not arise as the present plaintiffs 2 and 3 were then minors and were not adequately represented. *Held*, further, that the present plaintiff 1, who was defendant 4 in the former suit, was no more than a *pro formâ* defendant and took no active part and was not bound by the result of that suit the decree in which was in his favour. *Raja Rampal Singh* v. *Ram Ghulam Singh, L. R. 32 I. A. 17*, distinguished. SUNDRA *v.* SAKHARAM GOPALSHET (1914) **I. L. R. 39 Bom. 29**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 11**—*contd.*

2. ——— *Res judicata—Termination of tenancy by decree on prior mortgage.* The appellant purchased a plot of land at a sale held in execution of a mortgage-decree. In the mortgage-suit the plaintiff-mortgagee's case was that the tenant-defendants to that suit had taken their tenancies from the mortgagor after the date of the mortgage and the mortgagee prayed for the sale of the property free from the tenancies. The case set up by one of the respondents who was the elder brother of the other respondents was that they held a permanent tenure created prior to the mortgage which was confirmed by a confirmatory lease after the mortgage and that they had erected a masonry building on the land. Issues were framed on this point and the Court found in favour of the plaintiff-mortgagee, and in execution of the mortgage-decree the property was sold free of all encumbrances and purchased by the appellant. Subsequently a portion of the land so purchased by the appellant was acquired under the Land Acquisition Act and the respondents put in a claim for the compensation-money alleging that they had a permanent *mokurari maurasi* interest in the land, the tenancy standing in the name of the elder brother. *Held*, that the matter was directly in issue in the former suit and decided against the Respondents and they could not open the question again. KANAI LAL JALAN *v.* RASIK LAL SADHUKHAN (1914) **19 C. W. N. 361**

3. ——— *Res judicata—Partition suit—Plaintiff's share declared and separated by metes and bounds—No proceeding by the defendant to correct errors if any in the apportionment—Subsequent suit by the defendant to correct error if lies—Mistake, suit to set aside decree on*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 11**—*contd.*

ground of, if lies. If any co-sharer applies for a partition of property, he must make the other co-sharers defendants, because the partition which is made in his favour is a partition against his co-sharers. That which gives him a portion of the property takes away all right which they would otherwise have to that portion, and therefore it is a decree against them and in favour of himself. Where a decree having been made in a suit for partition declaring the shares of the plaintiffs, a Commissioner under the Court's direction went and on the ground measured out the declared shares and the plaintiffs were put into possession thereof, but the defendants took no proceeding in the suit such as is provided for in the Code of Civil Procedure to correct errors, if any, made in partitioning out: *Held*, that, apart from such proceedings none of which were taken, the decree was *res judicata*, and a suit instituted by the defendants in the previous suit with a view to correct the apportionment made in favour of the plaintiffs in the previous suit was barred by *res judicata*. NALINI KANTA LAHIRI *v.* SARNAMOYI DEBYA (1914)
19 C. W. N. 531

4. ——— *Res judicata—Munsif's decision if ceases to be res judicata by rise of value of subject-matter—Pro formâ defendant when bound—Person not joined as executor when bound as such—Decree against limited owner, upon compromise, when binding on reversion—Decree erroneously declared not res judicata, effect of.* To determine, for purposes of *res judicata* whether the Court which decided the former suit had jurisdiction to try the subsequent suit, regard must be had to the jurisdiction of the Court at the date of the former suit and not to its jurisdiction at the date of the subsequent suit. A decree made by a Munsif cannot cease to be *res judicata* by reason of a gradual increase in the value of the subject-matter of the litigation. If a defendant actively contested the plaintiffs' claim, the decision of the suit will bind him even though he was merely described as a *pro-formâ* defendant and no relief was asked against him. A defendant who might have been joined both in his personal capacity and in that of an executor to another's estate cannot be treated as having been a party necessarily in his character as an executor when he was not described in the pleadings as such. Where a decision between the parties was considered by the Court and declared not to be *res judicata*, the latter decision even if erroneous in law becomes conclusive between the parties; and it was not open to any of them to plead in a later suit that the former decision still operated as *res judicata*. An adverse decision obtained against a limited owner such as a Hindu daughter, if obtained upon a fair trial, is *res judicata* on the issues decided therein against reversionary heirs. A decree passed on a compromise made *bonâ fide* for the benefit of the estate and not for the personal advantage of the limited owner has the same effect, and such a decree unless successfully impeached on the ground of fraud, coercion, collusion or any like reason would operate as *res judicata* against the reversioners. MOHENDRA NATH BISWAS *v.* SHAMSUNNESSA KHATUM (1914)
19 C. W. N. 1280

See RES JUDICATA. EXPL. IV
I. L. R. 37 All. 589

——— **s. 11, Expl. IV**—

1. ——— *Puisne mortgagee's suit—Prior mortgagee made a party, if bound to set up his mortgage in defence—Test—Necessary party.* A prior mortgagee impleaded as such in a puisne mortgagee's suit is not bound to set up his prior mortgage in defence of his rights. But if he has a subsequent mortgage as well, he is a necessary party in such a suit and he must set up not merely his later but his prior mortgage as well, failing which he will be debarred by the rule of *res judicata* from suing to enforce his earlier mortgage. A decree obtained by a puisne mortgagee in a suit in which a prior mortgagee was impleaded as such is no bar to a suit by the latter to enforce his mortgage which he was not bound to set up as a defence in that suit. The test in all such cases is —was the defendant impleaded as a puisne mortgagee and therefore a necessary party? *Ibrahim Hussain Khan* v. *Ambika Pershad, I. L. R. 39 Calc. 527: s. c. 16 C. W. N. 505*, referred to. KRISHNA DOYAL GIR *v.* SYED MD. AMIRUL HASSAN (1914) . . . . **19 C. W. N. 942**

2. ——— *Res judicata, plea of, not taken in written statement, if may be taken on appeal.* A plea of *res judicata* not taken in the written statement was allowed to be taken on appeal under O. XLI, r. 2, C. P. C., O. VIII, r. 2, being held to be no bar to its being taken at that stage. KRISHNA DOYAL GIR *v.* SYED MD. AMIRUL HASSAN (1914) . . . **19 C. W. N. 942**

3. ——— *Subsequent mortgagee who does not appear in prior mortgagee's suit, if may subsequently set up an earlier mortgage paid off by advances upon his mortgage.* A subsequent mortgagee who has been made a party to a suit on a prior mortgage, but who has failed to appear, cannot afterwards raise the plea that he had paid off a prior lien and was therefore in the position of a prior mortgagee. *Krishna Doyal Gir* V. *Syed Md. Amirul Hassan, 19 C. W. N. 942*, referred to. *Ibrahim Hussain Khan* v. *Ambika Pershad, I. L. R. 39 Calc. 527: s. c. 16 C. W. N. 505*, followed. HANKAR RAY *v.* KAMTA PROSHAD SAHU (1915)
19 C. W. N. 947

4. ——— *Dekkhan Agriculturists' Relief Act (XVII of 1879), ss. 12 and 13—Prior and subsequent mortgages upon the same property by the same mortgagor to co-parcener mortgagees—Suit on subsequent mortgage without reference to the prior mortgage—Subsequent suit on the prior mortgage—Separate causes of action—Subsequent suit barred—Res judicata—Finding as a matter of*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 11**—*contd.*

fact that the two mortgages had been transactions "out of which the suit has arisen." A mortgagee, who has two mortgages of different dates upon the same property, having sued upon a mortgage of the later date and having had the property sold without reference to the prior mortgage, cannot afterwards bring a suit on the prior mortgage though the causes of action for the two suits are distinct. This rule is not the result of Order II, rule 2 of the Civil Procedure Code (Act V of 1908) but it depends upon the principle of *res judicata*. *Per* Hayward, J. If the two mortgages had been found as a matter of fact to have been transactions "out of which the suit has arisen," the subsequent suit on the prior mortgage would have further been barred in view of the previous suit on the subsequent mortgage by the provisions of Order II, rule 2 of the Code and the special provisions of s. 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). DHONDO RAMCHANDRA *v.* BHIKAJI (1914) **I. L. R. 39 Bom. 138**

——— **ss. 11 and 13**—*Res judicata—Foreign judgment—Effect of decision in British India as to title to part of an estate on a suit filed in Rampur for possession of another portion of the same estate situated there.* Certain claimants of the estate of a deceased person, which was situated partly in the Bareilly district and partly in the State of Rampur, sued in Bareilly to recover the portion situated there, and obtained a decree. Other claimants filed a similar suit in Rampur in respect of the portion situated there. *Held*, on suit by the plaintiffs in the Bareilly Court for a declaration that the judgment of that Court operated as *res judicata* in respect of the suit in Rampur and for an injunction restraining further proceedings in the Rampur Court, that neither relief could be granted. MAQBUL FATIMA *v.* AMIR HASAN KHAN (1914) **I. L. R. 37 All. 1**

——— **ss. 11 and 47**—*Mortgage debt—Suit for recovery by sale of mortgaged property—Decree for payment within six months and in default sale—No further action taken under the decree—Continuance of the relation of mortgagor and mortgagee—Suit by mortgagor for redemption—No bar of sections 11 and 47 of the Civil Procedure Code (Act V of 1908).* The defendant in a suit for sale under a mortgage-decree, who is given six months' time to pay the decretal debt and in default the plaintiff to recover the decretal debt by sale of the mortgaged property, is not in a position of a decree-holder who has a decree to execute. His right of payment within six months is a right which he has in mitigation of his liabilities under the decree. If he does not pay within six months and the mortgagee does not apply for decree absolute, the latter does not get rid of the relationship of mortgagor and mortgagee and there is nothing to prevent the mortgagor or his representative from filing a suit for redemption but he cannot go behind the decree in the mortgagee's suit in so far as it settled the amount of the mortgage debt up to the date of that decree. Such a suit for redemption is not barred either under section 11 or section 47 of the Civil Procedure Code (Act V of 1908). RAMA *v.* BHAGCHAND (1914) **I. L. R. 39 Bom. 41**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 11**—*concld.*

——— **s. 16**—

See JURISDICTION.

I. L. R. 42 Calc. 942

——— **s. 20**(*c*)—*Cause of action—Jurisdiction—Suit to set aside a decree on the ground of fraud—Decree obtained in Bengal—Suit filed in Agra.* The plaintiff sued in the court of a Munsif in the district of Agra, to set aside on the ground of fraud a decree obtained from a court at Siliguri in Bengal. It was part of the plaintiff's case that the defendant fraudulently prevented the institution of the suit from becoming known to him, by causing the notice of suit to be served on some other person and an incorrect return to be made to the court. The plaintiff further alleged that the defendant had in execution of his decree caused certain property belonging to the plaintiff in the district of Agra to be attached *Held*, that a material portion of the plaintiff's cause of action arose in the district of Agra and the Munsif had jurisdiction to try the case. *Banke Behari Lal* v. *Pokhe Ram, I. L. R. 25 All. 48, Nanda Kumar Howladar* v. *Ram Jibon Howladar, I. L. R. 41 Calc. 990, Radha Raman Shaha* v. *Pran Nath Roy, I. L. R. 28 Calc. 475, Khagendra Nath Mahata* v. *Pran Nath Roy, I. L. R. 29 Calc. 395, Thakur Prasad* v. *Punkal Singh, 8 C. L. J. 485, Abdul Huq Chowdhry* v. *Abdul Hafiz, 14 C. W. N. 695*, referred to. *Dan Dayal* v. *Munna Lal, I. L. R. 36 All. 564*, and *Kalian Das* v. *Bakshi Ram, F. A. f. O. No. 14 of 1910*, not followed. JAWAHIR *v.* NEKI RAM (1914) **I. L. R. 37 All. 189**

——— **s. 24**—

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1904), S. 90.

I. L. R. 38 Mad. 472

——— *Small cause suit instituted in a Subordinate Court—Transfer by the District Judge to District Munsif's Court—Order directing trial as an original suit—Subsequent transfer by the District Judge to another District Munsif's Court—Decree by the latter—Appeal against such decree to the District Court—Transfer of appeal to the Subordinate Court—Decree on appeal by the Subordinate Court—Revision to the High Court—Appeal to the District Court incompetent—Decree of the Subordinate Court set aside as without jurisdiction—Provincial Small Causes Courts Act (IX of 1887), ss. 27, 32, 33, and 35—Small Cause Court—Court invested with powers of a Small Cause Court—Character of Court trying a small cause suit on transfer—Civil Procedure Code (Act V of 1908), ss. 7 and 24.* Where a suit, which was instituted as a small cause suit in a Subordinate Judge's Court, was transferred by the District Court to a District

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 24**—*concld.*

Munsif's Court for trial as an original suit, and was again transferred to another District Munsif's Court for trial and disposal: *Held*, that the decree passed by the latter District Munsif's Court was the decree of a Court of Small Causes, and no appeal lay to the District Court against such decree. A Court invested with the powers of a Court of Small Causes is a Court of Small Causes within the meaning of s. 24 of the Code of Civil Procedure (Act V of 1908), though the suit was not transferred to such Court immediately from a Court of Small Causes. SANKARARAMA *v.* PADMANABHA (1912)

I. L. R. 38 Mad. 25

——— **ss. 42, 145, 104** (*h*)—*Surety for judgment-debtor imprisoned in execution of decree—Appeal.* Where a person who stood surety for the performance by a judgment-debtor of a decree passed against him was arrested and detained in civil jail by order of a Munsif executing the decree of a Small Cause Court: *Held*, that he was entitled to appeal under ss. 42 and 145 of the Civil Procedure Code, the provisions of s. 104, cl. (*h*), of the Code notwithstanding. ADHAR CHANDRA GOPE *v.* PULIN CHANDRA SHAHA (1914)

19 C. W. N. 1085

——— **s. 47**—*Execution proceedings, orders in, when appealable—Order for delivery of possession to decree-holder auction-purchaser, if appealable.* Whether an order in execution proceedings is within the scope of s. 47, C. P. C., depends upon its nature and contents. An order for delivery of possession to the execution-purchaser was not an order relating to execution, discharge or satisfaction of the decree; nor was such an order one arising between the parties to the suit or their representatives merely because the decree-holder happened to be the execution-purchaser. SASI BHUSAN MOOKERJEE *v.* RADHA NATH BOSE (1914)

19 C. W. N. 835

——— **s. 47, O. XXI, r. 50, cls. (b), (c), O. XXX, rr. 5 and 8**—*Execution of decree against firm—Admission of partnership in pleadings—Service of summons individually as partner—Absence of notice with summons as to capacity of person served, effect of—Procedure for person not a partner but served individually as such—O. V, r. 17—Service of summons on defendant's refusal to accept it: s. 47—Order by Court executing decree against firm obtained from another Court calling upon persons found to be partners to show cause against execution, if a decree and if appealable.* A decree was obtained in the High Court against a firm the names of the partners of which were not disclosed. Execution was sought against three persons who were alleged to have been partners of the firm and the Court of the District Judge to which the decree was sent for execution held that one of them was not proved to be a partner and issued notice against the appellants only under O. XXI, r. 22, requiring them to show cause why the decree should not be executed against them. Against this order the appellants preferred an appeal to the High Court. It appeared that in the suit one of the appellants admitted in his written statement that he was a partner and the other appellant did not appear. The plaintiff had taken out summons against the latter for service in accordance with cl. (*a*) of r. 3 of O. XXX. The summons which was not accompanied by any written notice in terms of r. 5, O. XXX, was tendered to the appellant who was asked to receive it as the manager and agent of the firm and on his refusal to give a receipt, a copy of the summons was hung up on the outer door of the place of business of the firm. *Held*, that the order of the District Judge was plainly a final order made under s. 47, C. P. C., and was essentially a decree as it determined a question relating to the rights and liabilities of the parties with reference to the relief granted by the decree and the order was appealable. The fact that it was open to the judgment-debtors to avail themselves of the provision of sub-r. 1 of r. 40 of O. XXI did not alter the nature of the order. That the case of the Appellant who admitted partnership in his written statement was completely covered by sub-r. 1, cl. (*b*) of r. 50, O. XXI and execution was rightly directed to issue against him. That in the case of the other appellant there was individual service of summons on him as a partner within the meaning of cl. (*c*), sub-r. 1 of r. 50, O. XXI, and he could not rely on any representation alleged to have been made to him as regards his capacity by the agent of the decreeholder at the time of service of summons and the decree-holder was entitled to proceed with execution against him. That the service of the summons by posting it on the outer door of the premises of the firm on the refusal of the appellant to grant a receipt was clearly in accordance with r. 17 of O. V, which has in this respect altered the procedure laid down in s. 80 of the Code of 1882. That under r. 5 of O. XXX in the absence of a notice in writing as to the capacity of the person on whom summons is served, the person served shall be deemed to be served as a partner and the only method by which a person so served with summons can contest his liability as a partner is by appearance under protest in accordance with r. 8. BAISNAB CHARAN SHAHA *v.* BANK OF BENGAL (1914)

19 C. W. N. 1008

——— **s. 47, O. XXI, rr. 58, 60**—

See EXECUTION OF DECREE—SHEBAIT.

I. L. R. 42 Calc. 440

——— **s. 47, O. XXI, rr. 58, 60**—*Decree for money—Execution against representative of judgment-debtor—Objection that property not assets left by judgment-debtor, but objector's personal property—Claim whether to be determined under s. 47, O. XXI, r. 60.* When X in execution of a decree for money against Y proceeds against Z, as the legal representative of Y, in respect of property in the

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 47**—*contd.*

possession of Z and Z contends that the property belongs to him and never formed part of the estate of Y, the question which arises is whether such property is assets in the hands of Z and is liable to be seized in execution of the decree against Y and one for determination by the executing Court under s. 47 of the Civil Procedure Code. *Per* MOOKERJEE, J.—The Full Bench decision in *Panchanan* v. *Rabia Bibi, I. L. R. 17 Calc. 711,* is in no way affected by the decision of the later Full Bench in *Kartick Chandra Ghose* v. *Ashutosh Dhara, I. L. R. 39 Calc. 298 : s. c. 16 C. W. N. 26.* AJO KOER *v.* GORAK NATH (1914)

19 C. W. N. 517

——— **ss. 47 and 50, O. XXI, r. 90**—*Transfer of decree to another Court—Judgment-debtor, death of—Application to bring in legal representatives—Jurisdiction of such Court—Minor legal representative—Guardian ad litem, not appointed—Sale in execution—Decree-holder and auction-purchaser, fraud of—Sale, validity of—Application under O. XXI, r. 90—Conversion into a suit—Suit for setting aside, if necessary—Limitation Act (IX of 1908), Arts. 12, 95 and 166—Suit for other reliefs on the ground of fraud, if maintainable.* The first defendant obtained decrees in two suits, *viz.*, Original Suits Nos. 555 and 559 of 1903 on the file of the District Munsif's Court of Vizianagram against one S, the husband of the plaintiff and the second defendant. S died subsequent to the passing of the decrees, which were transferred to the District Munsif's Court of Rajam for execution. The first defendant filed an application in the latter Court for bringing on the record the plaintiff and the second defendant as the legal representatives of the deceased judgment-debtor and for execution of the decrees. The Court passed an order as prayed for. The plaintiff (the junior widow of S) was a minor at the time of the application and sale, but she was placed on the record as though she were a major without a guardian *ad litem* to act for her, though both the first defendant (the decree-holder) and the third defendant (the auction-purchaser) knew at the time that she was a minor. The second defendant (the co-widow) had then ceased to have any interest in her husband's estate. The decree-holder applied for sale in Original Suit No. 555 of 1903 of properties which were attached in both the aforesaid decrees. The third defendant, who bid for the properties for Rs. 601, caused the sale to be stopped in Original Suit No. 555 of 1903 ; the first defendant in collusion with the third defendant brought them to sale in Original Suit No. 559 of 1903, the reserve price was reduced to Rs. 200 and the third defendant purchased the property for Rs. 301 ; the executing Court was not informed of the sale in Original Suit No. 555 of 1903 and of the third defendant's bid for Rs. 601 therein. The sale was held on 19th October 1906 and was confirmed on 23rd January 1907. The plaintiff (who attained majority in July 1907) filed an application on the 16th March 1909 in Original Suit No. 559 of 1903 under s. 47 of the Code of Civil Procedure for setting aside the sale and for a declaration that the sale was invalid and for other reliefs. The petition was converted into a suit under the provisions of s. 47 of the Civil Procedure Code. The defendants contended that the sale was valid, that in any event the sale had to be set aside, and that both the application under s. 47 of the Civil Procedure Code and the suit were barred by limitation under arts. 162 and 12 of the Limitation Act respectively. *Held,* that the plaintiff who had no guardian *ad litem* appointed for her in the execution proceedings was not a party to the suit in which the sale was made, and was entitled to bring a suit for a declaration that the sale was not binding without regard to the provisions of s. 47 of the Civil Procedure Code. That the plaintiff not having been a party to the suit and not having been sufficiently represented by any one who was a party, the sale was not binding on the plaintiff and did not require to be set aside. That the suit which was instituted within three years of the plaintiff's attainment of majority was not barred by limitation. *Per* SADASIVA AYYAR, J. When a judgment-debtor has to set aside a sale of his property for fraud of the decree-holder or of both himself and the auction-purchaser, he can only apply under Order XXI, rule 90 of the Civil Procedure Code, subject to the limitation prescribed in art. 166 of the Limitation Act ; but he may be entitled to bring a suit for other appropriate reliefs on the ground of fraud against the decree-holder and the auction-purchaser, such as for damages or for injunction, subject to the limitation prescribed in art. 95 of the Limitation Act. PAYIDANNA *v.* LAKSHMINARASAMMA (1914)

I. L. R. 38 Mad. 1076

——— **ss. 47, 73**—

See RATEABLE DISTRIBUTION.

I. L. R. 42 Calc. 1

——— **s. 48**—

1. ——— *Civil Procedure Code (Act XIV of 1882), s. 230—Limitation Act (IX of 1908), Art. 182—Decree upon a compromise—Payment by instalments—Default—Execution—Minority of the legal representatives of the judgment-creditor—Step in aid of execution—Execution barred by the lapse of twelve years.* An instalment decree upon a compromise provided that upon default the judgment-creditor was entitled to possession of certain property. The decree was dated the 29th July 1884 and default in the payment of instalment was made in 1892. Thereupon the judgment-creditor applied for the execution of the decree. He died in 1898 and the execution proceedings were continued by his brother as his representative. In March 1902 the brother also died leaving minor sons. On the 27th June 1902 the guardian or the next friend of the minors applied to have the minors brought on the record as

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 48**—*concld.*

representing their father for continuing the execution proceedings. This application was rejected in September 1902 and the original application for execution which was presented by the judgment-creditor on default was also struck off. On the 1st September 1909 a fresh application to execute the original decree was presented by the minor sons of the judgment-creditor's said brother, one of the minors having in the meanwhile attained majority. The application was met by the objection that as it was made after the expiration of twelve years from the date of the default mentioned in the consent decree sought to be executed, it was barred by s. 48 of the Civil Procedure Code (Act V of 1908). *Held,* that the fresh application was time-barred as being made twelve years after the date of the default. Art. 182 of the Limitation Act (IX of 1908) showed that the fresh periods which could be obtained under the provisions of that article did not escape the provisions of s. 48 of the Civil Procedure Code (Act V of 1908). S. 48 of the Civil Procedure Code (Act V of 1908) is more extensive in its application than s. 230 of the Code of 1882 and it is wide enough to cover the compromise decree of which execution was sought. BALA RAM VITHALCHAND *v.* MARUTI (1914)

I. L. R. 39 Bom. 256

2. ——— *Decree in favour of minors—Application for execution twelve years after date of decree—Limitation Act (IX of 1908), s. 6.* S. 6 of the Indian Limitation Act, 1908, only refers to periods of limitation prescribed by the Act itself and has no application to a case where the decree is barred by the provisions of s. 48 of the Code of Civil Procedure, 1908. Minority, therefore, is not a ground of exemption from the operation of limitation provided for by s. 48 of the Code of Civil Procedure. *Moro Sadashiv* v. *Visaji Raghunath I. L. R. 16 Bom. 536,* dissented from. *Jhandu* v. *Moi.an Lal, Punj. Rec. (1894) 489,* and *Ramana Reddi* v. *Babu Reddi, I. L. R. 37 Mad. 186,* followed. PREM NATH TEWARI *v.* CHATARPAL MAN TEWARI (1915)

I. L. R. 37 All. 638

3. ——— " *Fraud or force of one judgment-debtor, not extending the twelve years as against others.*" The fraud or force of one of several judgment-debtors in preventing execution against him of a decree enables the decree-holder to get an extension of the twelve years provided for execution of the decree by s. 48, Civil Procedure Code (Act V of 1908), only as against that judgment-debtor but not as against his other co-judgment-debtors who have not been guilty of such conduct. *Per* CURIAM : The policy of the Limitation Act in the matter of execution of decrees may be different. ABDUL KHADIR *v.* AHAMMAD SHAIWA RAVUTHAR (1913) **I. L. R. 38 Mad. 419**

——— **s. 60**—*Permanent tenancy, with condition of forfeiture on transfer—Holding saleable in execution.* The word " saleable " in s. 60 of the

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 60**—*concld.*

Civil Procedure Code means saleable by auction at a compulsory sale under the orders of the Court and not transferable by act of parties. Where in a permanent lease there was a condition that the landlord would re-enter if the tenant made any transfer of the land demised : *Held,* that the lease forbade a sale by the tenant but did not prevent a sale by the Court. KESHAB CHANDRA PRAMANIK *v.* AJAHAR ALI BISWAS (1914)

19 C. W. N. 1182

——— **ss. 68 and 70—Sch. III**—*Exemption of a decree by Collector—Delegation to Assistant Collector of functions of Collector—Application to Assistant Collector to take action—Ultre Vires—Penal Code (Act XLV of 1860), s. 128.* *A* obtained a decree for money against *B.* In execution there-of certain immoveable property was ordered to be sold and the execution was transferred to the Collector of Basti under s. 68 of the Code of Civil Procedure. The property was sold and purchased by *C. B* applied for permission to deposit the sum decreed and 5 per cent. of the purchase money. He next presented a petition saying that he had made the required deposit. Subsequently he put in a petition to the effect that some unauthorized person had paid the money into the Treasury, and that he had been compelled to put his thumb impression on a blank paper which was used for the petition aforesaid. This petition was presented to the Assistant Collector and the officer ordered *B's* prosecution under s. 182, Indian Penal Code. *Held,* that inasmuch as the Assistant Collector had no power to deal with *B's* applications except by passing them on to the Collector, s. 182 of the Indian Penal Code did not apply and the Assistant Collector had no jurisdiction to order *B* to be prosecuted thereunder. EMPEROR *v.* BHAJAN TEWARI (1915)

I. L. R. 37 All. 334

——— **s. 73**—

See CO-OPERATIVE SOCIETY.

I. L. R. 42 Calc. 377

See RATEABLE DISTRIBUTION.

I. L. R. 38 Mad. 221

1. ——— *Application for rateable distribution—Objection that decree obtained by applicant for rateable distribution was fraudulent—Jurisdiction of Court to hold summary inquiry—Evidence Act (1 of 1872), s. 165—Examination of judgment-debtor without notice to parties after the close of case and before delivery of judgment.* The petitioner obtained a decree for money against one H and his brothers. Previous to the petitioner's decree the opposite party had obtained a decree against the same judgment-debtors. In the execution proceedings commenced by the petitioner, there was an application for rateable distribution by the opposite party and in the proceedings for execution commenced by the opposite party, there was an application for rateable distribution by the petitioner. The opposite party, however,

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 73**—*contd.*

objected to the application for rateable distribution by the petitioner, on the allegation that the decree obtained by the latter was fraudulent. The Subordinate Judge held a summary enquiry into the matter and allowed the opposite party's objection. It appeared that in the enquiry, after evidence on both sides was adduced and arguments addressed to the Court, judgment was reserved. Thereafter the Court examined the judgment-debtor H without notice to the pleaders for the parties and relied on his statements in passing the final order: *Held*, that the Subordinate Judge had jurisdiction to hold a summary enquiry into the matter, but the examination of H should not have taken place without notice to the parties or their pleaders and without any opportunity afforded to them to cross-examine him or to rebut his statements. S. 165 of the Evidence Act does not justify the procedure adopted by the Judge. PEARY LAL DAS *v.* PEARY LAL DAWN (1913) **19 C. W. N. 903**

2. ——— *Surplus sale-proceeds, distribution amongst attaching creditors—Money standing to the credit of one suit, application for transfer to another suit, if to be made in former—Practice—Certificates of Accountant-General and Registrar, Original Side, required with application.* Where money in Court stands to the credit of one suit and the plaintiff in another suit has, by reason of being an attaching creditor or mortgagee or otherwise, an interest in such money and desires the fund to be transferred to the credit of his suit in order to be dealt with therein, he should in all cases make the application in the suit to whose credit the money stands for the transfer. In an application on the Original Side of the High Court for the transfer and rateable distribution of funds to which the provisions of s. 73 (*1*), cl. (*c*), of the Code of Civil Procedure (Act V of 1908) may possibly apply, the applicant should be required to produce, in addition to the certificate of the Accountant-General, a certificate of the Registrar. KUMAR KRISHNA MITTER *v.* AMULYA CHARAN MITTER (1915) . . . **19 C. W. N. 345**

——— **s. 73, O. XXI, r. 89**—

——— *Execution sale set aside by deposit by judgment-debtor—Application for rateable distribution of money deposited, if lies.* The Court has no power to rateably distribute under s. 73 of the Civil Procedure Code money deposited in Court under O. XXI, r. 89, with a view to setting aside a sale of immoveable property in execution of a money decree. HARAI SAHA *v.* FAIZLUR RAHAMAN (1913) **19 C. W. N. 1125**

——— **s. 73, O. XXXVIII, rr. 5, 8, and 10; O. XXI, rr. 52 and 63**—

——— *Effect of attachment before judgment—Property deposited in Court—Decree—Priority—Suit for a declaration that attachment before judgment did not confer any title on the attaching creditor.* A got certain property belonging to B attached before judgment. The property being of a perishable nature it was sold and the proceeds were deposited in Court. Subsequently one C obtained a decree against B and applied for the satisfaction of his decree out of the sum of money that was lying in Court. A filed an objection and it was allowed by the Court. After A had obtained his decree, the sum deposited in Court was distributed rateably between A and C. C brought the present suit for a declaration that he was entitled to get his decree satisfied out of the sum which had been deposited in Court: *Held*, that the effect of attachment before judgment was to prevent alienation. It did not confer any priority of title on the attaching creditor, and, therefore, the plaintiff was entitled to get his decree satisfied and the suit was maintainable. *Tikum Singh* v. *Sheo Ram Singh, I. L. R. 19 Calc. 286*, referred to. BISHESHAR DAS *v.* AMBIKA PRASAD (1915) **I. L. R. 37 All. 575**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 73**—*concld.*

——— **s. 86**—*Sovereign Prince or Ruling Chief in British India, suit against—Sovereign or private capacity—Suit against him as trustee of certain temples—Rule of international law—Jurisdiction of municipal Courts—Waiver.* Under s. 86 of the Civil Procedure Code (Act V of 1908), no Sovereign Prince or Ruling Chief can be sued in a Court of British India without the previous consent of the Governor-General in Council, whether the suit is brought against him in his sovereign capacity or in his private capacity such as a trustee of a temple in British India. *The Maharaja of Jaipur* v. *Lalji Sahai, I. L. R. 29 All. 379*, *Mighell* v. *Sultan of Johore, [1894] 1 Q. B. 149*, *Statham* v. *Statham and the Gaekwar of Baroda, [1912] L. R. Pr. 92*, and *Chandulal* v. *Awad bin Umar Sultan, I. L. R. 21 Bom. 351*, referred to. *Duke of Brunswich* v. *The King of Hanover, (1848) 2 H. L. C. 1*, explained. NARAYANAN MOOTHAD *v.* THE COCHIN SIRCAR (1913) . . . . **I. L. R. 38 Mad. 635**

——— **s. 92**—

1. ——— *Public trust—Suit instituted by two plaintiffs—Death of one plaintiff pending suit—Abatement of suit.* Where a suit concerning a public trust of a charitable or religious nature has been instituted by two persons having an interest in the trust with the consent of the Advocate-General and one of the plaintiffs dies, the suit will abate. But it is open to any other member of the public similarly interested to obtain the consent of the Advocate-General and to apply to be brought on to the record as a co-plaintiff, and it would be the duty of the Court to give a person wishing so to be made a party a reasonable opportunity of obtaining the consent of the Advocate-General. CHHABILE RAM *v.* DURGA PRASAD (1915) **I. L. R. 37 All. 296**

2. ——— *Suit regarding public charitable property—Consent by Collector—Conditional consent.* A suit was brought in the

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— s. 92—*concld.*

name of two plaintiffs for the removal of trustees for a declaration that the property in the hands of the trustees belonged to the Darga of Pir Saheb and to recover possession of the property. Before the institution of the suit one of the plaintiffs applied to the Collector of the District for permission to file the suit under s. 92 of the Civil Procedure Code of 1908. The Collector replied as follows :—" The Collector doubts whether s. 92 of the Civil Procedure Code applies to this case, but if the Court holds that it does, the Collector hereby declares his consent to the filing of a suit to claim any of the reliefs specified in s. 92 which the Court may deem fit to grant." The trying Court was of opinion that the above certificate was defective in form and therefore dismissed the suit. The plaintiffs having appealed. *Held,* dismissing the appeal, that the Collector had not acted in the manner provided by s. 92 of the Civil Procedure Code of 1908. He had not indicated on the proceedings that the suit was filed with his consent and that he had not even come to a conclusion that the suit was one which should have been filed. The Collector acting under s. 93 of the Civil Procedure Code had no right to consent to the institution of a suit by two persons claiming to have an interest in the trust unless it was such a suit as he would consider himself to be justified in filing at the relation of such two persons in his own name. The provisions of s. 92 of the Civil Procedure Code must be regarded as imperative. SULEMAN HAJI USMAN *v.* SHAIKH ISMAIL (1915) **I. L. R. 39 Bom. 580**

3. ——— *Suit by mutawalli to remove trespasser managing trust as trustee de facto—Leave, if necessary.* S. 92 of the Civil Procedure Code does not apply where a plaintiff claiming to be the trustee of a public religious and charitable trust sues for the removal of a trespasser who has usurped the management of it. *Budree Das Mukim* v. *Chooni Lal Johurry, 10 C. W. N. 581* : *s. c. I. L. R. 33 Calc. 789,* followed. *Neti Rama Jogiah* v. *Venkata Charulu, I. L. R. 26 Mad. 451,* and *Sajedur Raja Chowdhuri* v. *Gour Mohun Das Baishnav, I. L. R. 24 Calc. 418,* not followed. AYATANNESSA BIBI *v.* KULFU KHALIFA (1914) . . . . . **19 C. W. N. 234**

4. ——— *Waqf—Suit for removal of mutawalli—Defendant alleged to be a minor, but no allegation of mismanagement of waqf property. Held,* that no suit would lie under s. 92 of the Code of Civil Procedure for the removal of a *mutawalli* where no case of mismanagement of the waqf property was made out ; but the sole ground was that the defendant (who was the grandson of the last *mutawalli* and most substantial benefactor of the waqf) was a minor according to the provisions of the Indian Majority Act, 1874, though apparently not so according to the Mahomedan law. NIAMAT ALI *v.* ALI RAZA (1914) **I. L. R. 37 All. 86**

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— s. 92, O. I, r. 3—

See PARTIES **I. L. R. 42 Calc. 1135**

——— ss. 92 and 93, suit under—*Alienee from trustee—Declaration against—Appeal by alienee—Death of trustee pending appeal—Abatement—Right to sue, meaning of—Alienee for consideration but not in good faith or without notice—Limitation Act (IX of 1908), s. 10, effect of.* Where in a suit brought by the Collector of a district under s. 92 of the Code against the trustee and the alienee from him, a declaration was granted to the effect that the alienation in favour of the latter was not binding on the trust, and the alienee appealed, making the Collector and the trustee parties to the appeal, but pending appeal, the trustee died and his legal representative was not brought on the record : *Held,* that the appeal did not abate as the trustee was not a necessary party to it. *Held,* also, that the cause of action against the alienee (who was an alienee for consideration) arose on the date of the alienation and as the suit was brought more than six years after that date, it was barred by limitation under art. 20 of the Limitation Act. Time will run in favour of an alienee for consideration though he may not be an alienee in good faith. Trust property in the hands of alienees for consideration and in good faith and without notice cannot be followed at all. *Per* TYABJI, J.—The phrase " right to sue " with reference to appeals means " right to obtain relief." PRASANNA VENKATACHELLA REDDIAR *v.* THE COLLECTOR OF TRICHINOPOLY (1914) **I. L. R. 38 Mad. 1064**

——— s. 97—

See APPEAL . **I. L. R. 42 Calc. 914**

1. ——— *Preliminary decree—Appeal—Decisions that suit not barred as caste question.* A decision in favour of the plaintiff upon a preliminary defence that the matters in dispute are caste questions outside the jurisdiction of Civil Courts does not amount to a preliminary decree attracting the provisions of s. 97 of the Civil Procedure Code (Act V of 1908). *Siddhanath Dhonddev* v. *Ganesh Govind, I. L. R. 37 Bom. 60,* overruled. *Narayan Balkrishna* v. *Gopal Jiv Ghadi, I. L. R. 38 Bom. 392,* dissented from. CHANMALSWAMI *v.* GANGADHARAPPA (1914) **I. L. R. 39 Bom. 339**

2. ——— *Preliminary decree—Appeal—Decision as to res judicata.* A decision that a matter is not *res judicata* is not a preliminary decree. *Chanmalswami* v. *Gangadharappa, I. L. R. 39 Bom. 339,* followed. BHARMA BIN SHIDAPPA *v.* BHAMAGAVDA (1915) . **I. L. R. 39 Bom. 421**

3. ——— *Partnership accounts, suit for—Preliminary decree declaring partnership dissolved and directing enquiries and accounts—Part ordering enquiries if to be separated from decree and treated as order—Validity of order if may be questioned on appeal from final decree.* In a suit to have partnership accounts taken, the

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— s. 97—*concld.*

Jrial Judge by a formal adjudication, dated 30th Tune 1908, (i) declared that the partnership was dissolved as from 1st July 1907, and ordered and decreed, (ii) that inquiry be made by the referee as to who were the partners, and (iii) that the Referee should take an account of the dealings of the parties with the assets of the partnership business. No appeal was preferred from this adjudication, and inquiry was made and accounts taken. The decision of the referee upon the inquiry which was adverse to the appellant was confirmed by the Judge. In an appeal against the final decree, the appellant took exception to the inquiry ordered by the Judge (as to who were the partners) as erroneous. *Held,* that the adjudication by the Trial Judge in which the inquiry was ordered was a preliminary decree, and not having been appealed against could not under s. 97 of the Civil Procedure Code be questioned on the final appeal. The adjudication did not cease to be a decree, because a subordinate part of it, if correctly made, might have been made separately as an order. The Code makes no provision for something which is neither a decree nor an order, nor anything which is both, neither does it provide that one adjudication by the Court can be resolved into diverse elements, some of which are decrees and some orders. AHMED MUSAJI SALEJI *v.* HASHIM EBRAHIM SALEJI (1915) **19 C. W. N. 449**

——— s. 99—

See HINDU LAW—RELIGIOUS ENDOWMENT . . **I. L. R. 42 Calc. 536**

——— s. 100, O. VI, r. 6—

See SPECIFIC RELIEF ACT (I OF 1877), S. 39 . . **I. L. R. 39 Bom. 49**

——— s. 102—

See HOMESTEAD LAND.
I. L. R. 42 Calc. 638

——— s. 105—

See APPEAL TO PRIVY COUNCIL.
I. L. R. 38 Mad. 509

——— s. 105—*Arbitration—Appeal.* *Held,* that an order of a court setting aside the award of an arbitrator, and deciding that the case shall be tried by the Court is an order affecting the decision of the case within the meaning of s. 105 of the Code of Civil Procedure, and is therefore liable to be challenged in appeal against the decree. *Ganga Prasad* v. *Kura, I. L. R. 28 All. 408, Kalyan Das* v. *Pyare Lal, 4 All. L. J. R. 256,* dissented from. *Shyama Charan Pramanik* v. *Prohlad Darwan, 8 C. W. N. 390,* referred to. *Nanak Chand* v. *Ram Narain, I. L. R. 2 All. 181, Ram Jiwan* v. *Nawal Singh, 5 All. L. J. R. 644, Damodar Trimbak Dharap* v. *Raghu Nath Hari, I. L. R. 26 Bom. 551, Achuthayya* v. *Thimmayya, I. L. R. 31 Mad. 345, Mathooranath Tewaree* v. *Brindaban Tewaree, 14 W. R. 327,* followed. RAM AUTAR TEWARI *v.* DEOKI TEWARI (1915)
I. L. R. 37 All. 456

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— s. 107, O. XLI, r. 4, application of—

See COSTS . . **I. L. R. 42 Calc. 451**

——— s. 109 —

See APPEAL TO PRIVY COUNCIL.
I. L. R. 38 Mad. 509

——— s. 109 (c)—*Appeal to His Majesty in Council—Practice—Grounds for granting certificate in case of connected appeals.* It is a good ground for granting a certificate of fitness for appeal to His Majesty in Council under s. 109 (c) of the Code of Civil Procedure that the case in which leave to appeal is sought is an appeal from the same decree and involving the same questions as another appeal in respect of which the same applicant has a right of appeal under ss. 109 and 110 of the Code. MUHAMMAD WALI KHAN *v.* MUHAMMAD MOHI-UD-DIN KHAN (1914) . . . . **I. L. R. 37 All. 124**

s. 110—

See LEAVE TO APPEAL TO PRIVY COUNCIL.
I. L. R. 42 Calc. 35

——— ss. 114, 151—

See PROBATE AND ADMINISTRATION ACT (V OF 1881), S. 50.
I. L. R. 37 All. 380

——— s. 115—

See AWARD . **I. L. R. 38 Mad. 256**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89.
I. L. R. 38 Mad. 775

——— *Civil Rules of Practice, Rule 277—Criminal Procedure Code (Act V of 1898), s. 145—Pleader engaged in proceedings under—Whether disqualified to act for the other side in subsequent civil suit.* A pleader who had appeared for a party in proceedings under s. 145 of the Code of Criminal Procedure, must, before appearing for the opposite party in a subsequent civil suit flowing out of such proceedings, satisfy the court that in acting in those proceedings he did not as a fact obtain from his then client any knowledge which would be of use to his present clients, or that if he did obtain any such knowledge, then such knowledge is now, so to speak, public property available to any pleader who can obtain inspection of the record of the proceedings in the Magistrate's Court. If he fails to do so, he brings himself within rule 277 of the Rules of Practice framed by the High Court and it cannot be said that the Court has wrongly exercised its discretion in refusing him audience. *Little* v. *Kingswood Collieries Company, 20 Ch. D. 733,* referred to. SRINIVASA RAU *v.* PICHAI PILLAI (1913)
I. L. R. 38 Mad. 650

——— s. 141, O. II, r. 2—

See EXECUTION . **I. L. R. 38 Mad. 199**

——— s. 141, O. XXI, r. 90, O. IX, r. 9—

Application for setting aside sale—Dismissal for

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— s. 141—*concld.*

default—Restoration. An application for setting aside an execution-sale is not an application for execution, but in the nature of an original proceeding which is not excluded from the purview of s. 141 of the Civil Procedure Code. Such application if dismissed for default can be restored under O. IX, r. 9, of the Civil Procedure Code. *Aism Mandal* v. *Raj Mohan Das, 13 C. L. J. 532,* and *Hari Charan Ghose* v. *Manmatha Nath Sen, I. L. R. 41 Calc. 1,* distinguished. *Subbiah Naicker* v. *Ramanathan Chettiar, I. L. R. 37 Mad. 462, 475,* and *Safdar Ali* v. *Kishun Lal, 12 C. L. J. 6,* followed. NICHHA BIBEE *v.* HEMANTA KUMAR RAY (1915) . . . . **19 C. W. N. 758**

——— s. 144—*Decree-holder as auction-purchaser in possession of property sold for more than three years—Subsequent setting aside of sale—Mesne profits, application for, by purchaser from judgment-debtor—S. 144, Civil Procedure Code, applicability of—Inherent jurisdiction of Court—Mesne profits for more than three years if can be allowed—Limitation Act, Art. 109.* A sale held in execution of a decree at which the decree-holder was the auction-purchaser was set aside. He had been in possession of the property for more than three years. The respondent purchased the property from the judgment-debtor together with the right to sue the decree-holder for mesne profits in respect of the period during which he was in possession. The respondent applied to the Court for and obtained such mesne profits. *Held,* that the Court below had no jurisdiction under s. 144, Civil Procedure Code, to entertain the application, but inasmuch as the respondent obtained an order in his favour in the Court below purporting to be made under s. 144, Civil Procedure Code, and inasmuch as a determination of a question arising under s. 144 is a decree by force of the definition clause in s. 2, the respondent could not be heard to say that the appeal was incompetent. That even assuming that the Court had inherent jurisdiction to award mesne profits upon the application presented by the respondent it either had no power or it was an improper and unsound exercise of judicial discretion to award mesne profits for any period beyond three years before the application for which only mesne profits could have been obtained by suit under Art. 109 of the Limitation Act. DINO NATH DAS *v.* JOGENDRA NATH BHOUMIK (1914) . **19 C. W. N. 1167**

——— s. 145—

1. ——— *Surety for costs of Privy Council Appeal—Decree for costs in Privy Council if may be executed against properties charged by surety—Personal execution.* Under s. 145 of the Civil Procedure Code, a party who has obtained a decree for costs in Privy Council can proceed by application to realise the amount of costs decreed against the surety (for the judgment-debtor) personally, but not against the property which he had charged under s. 602 of the old Civil Procedure Code. Even under O. XXXIV, r. 14, of the Civil Procedure Code, which has replaced s. 99 of the Transfer of Property Act, the properties charged cannot be sold except by instituting a mortgage suit. CHANDRABATI *v.* MADHO PROSAD (1914) . . . . . **19 C. W. N. 178**

2. ——— *Surety, execution of decree against—Person depositing chattels to secure fulfilment of decree, if such surety—Personal liability, if essential.* S. 145 of the Civil Procedure Code applies only where the surety has rendered himself personally liable for the decretal amount. Where *A* having been brought under arrest in execution of a decree, *B* handed over two Government promissory notes to the decree-holder's pleader upon the understanding that the latter should hold them as security for the due fulfilment of the decree against *A* : *Held,* that the case did not come under s. 145, Civil Procedure Code. *B* only created an equitable charge upon the notes in favour of the decree-holder by depositing them as security, and this liability could only be enforced in a regular suit. BRAJENDRA LAL DAS *v.* LAKHMI NARAIN KHANNA (1915) . . . . . **19 C. W. N. 961**

——— s. 151, O. XLI, rr. 1, 11—

See APPEAL . **I. L. R. 42 Calc. 433**

——— ss. 151, 47, O. XLVII, r. 2—*Court's inherent power, if to be exercised in contravention of prohibition of statute, and if to be exercised when not tending towards substantial justice—Statute, application of.* In exercise of its inherent powers under s. 151 of the Civil Procedure Code, the Court cannot assume jurisdiction to grant a review where it has been expressly forbidden by the Legislature to entertain such application. On any point specifically dealt with by the Code, the Court cannot disregard the letter of the enactment according to its true construction, though, as the Legislature cannot anticipate and make express provisions to cover all possible contingencies, it is the duty of a Judge to apply the provisions of the law not only to what appears to be regulated expressly thereby, but also to all cases to which just application of them may be made and which appears to be comprehended either within the express sense of the law or within the consequences that may be gathered from it. The inherent power of a Court can be invoked only for the attainment of the ends of substantial justice for the administration of which alone Courts exist. A sale certificate is merely evidence of title and does not create title, so that if the Court should refuse to grant such a certificate to the auction-purchaser, possession should not be delivered to him as required by the Code. This will not preclude him from suing for a declaration of title and for recovery of possession within 12 years of the date when the sale was confirmed. Where purporting to act under s. 151, Civil Procedure Code, a

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **s. 151**—*concld.*

Munsif cancelled an order for delivery of possession passed by his predecessor on the ground that the application for delivery of possession having been made more than 3 years after the date of confirmation of the sale was manifestly barred by limitation. *Held*, that as the Munsif was expressly forbidden by statute to entertain an application for review, he could not entertain the application in exercise of his inherent powers. That the order should not have been made, as its only effect would be to drive the auction-purchaser to institute a suit. SASI BHUSAN MOOKERJEE *v.* RADHA NATH BOSE (1914) . . **19 C. W. N. 835**

——— **ss. 151, 152**—*Inherent jurisdiction of Court—Scope of s. 151—Amendment of decree.* S. 152 does not in any way affect the inherent jurisdiction of the Court under s. 151 and in exercise of this jurisdiction the Court can amend a decree even when s. 152 has no application. MOHABIR PROSHAD CHOUDHURY *v.* CHANDRA SEKHAR SAHI (1914) . . **19 C. W. N. 1021**

——— **s. 152**—*Refusal of Court to correct an accidental mistake in the drawing up of a decree—Revision—Jurisdiction.* In a suit for sale on foot of a mortgage one of the defendants pleaded a prior mortgage. An issue was expressly struck on the point and was found in favour of the prior mortgagee. The operative portion of the judgment directed that a decree for sale should be prepared in accordance with the provisions of O. XXXIV, r. 4, of the Code of Civil Procedure; but the decree which was drawn up was one for sale of the property in suit, without any reference to the prior mortgage. The prior mortgagee presented an application under s. 152 of the Code of Civil Procedure to the Court which passed the decree to have it amended. *Held*, that the prior mortgagee, whether or not he had preferred an appeal from the decree, was entitled, with reference to s. 152, to have it amended, and the Court in refusing to amend had failed to exercise a jurisdiction vested in it by law. SAHADEO GIR *v.* DEO DUTT MISIR (1915) **I. L. R. 37 All. 323**

——— **s. 153**—

See DECREE-HOLDER.

I. L. R. 38 Mad. 677

——— **O. I, r. 1**—

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 406

——— **O. I, r. 10**—*Parties—Competence of Court to add parties in second appeal. Held*, that the High Court cannot in second appeal add a person as a party unless such person was a party to the appeal before the lower Appellate Court, notwithstanding that he was a party to the suit in the Court of first instance. *Chunni Lal* v. *Lala Ram, I. L. R. 16 All. 5*, followed. PACHKAURI RAUT *v.* RAM KHILAWAN (1914) **I. L. R. 37 All. 57**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. II, rr. 1, 2, and 3**—*Previous suit for declaration, dismissal of, for want of prayer for possession—Later suit for declaration and possession, maintainability of.* The dismissal of a previous suit for a declaration of title to certain properties on the ground that the plaintiff was found entitled to possession is no bar to a suit for possession based on the same title as the causes of action, for which the allegations in the plaints must be looked to, are different in the two cases. O. II, rr. 1, 2 and 3 are no bar to the later suit. *Chand Kour* v. *Partab Singh, I. L. R. 16 Calc. 98, Thrikaikat Madathil Raman* v. *Thiruthiyil Krishnan Nair, I. L. R. 29 Mad. 153, Ramaswami Ayyar* v. *Vythinatha Ayyar, I. L. R. 26 Mad. 760, Nonoo Singh Monda* v. *Anand Singh Monda, I. L. R. 12 Calc. 291, Jibunti Nath Khan* v. *Shib Nath Chuckerbutty, I. L. R. 8 Calc. 819*, and *Mohan Lal* v. *Bilaso, I. L. R. 14 All. 512*, followed. *Muthu Narayana Reddi* v. *Rayalu Reddi, 6 Mad. L. J. 51*, and *Rangasami Pillai* v. *Krishna Pillai, I. L. R. 22 Mad. 259*, not followed. SILIMAN SAIB *v.* HASSON (1913) . **I. L. R. 38 Mad. 247**

——— **O. II, r. 2**—

1. ——— *Omission to sue for right relief—Maintainability of subsequent suit.* Where a plaintiff knew what relief he was entitled to and deliberately omitted to claim the right relief, his subsequent suit in respect to the same cause of action for the right relief was held to be barred by the provisions of O. II, r. 2, of the Code of Civil Procedure. ABDUL HAKIM *v.* KARAN SINGH (1915) . . **I. L. R. 37 All. 646**

2. ——— *Previous suit for specific performance of an agreement to sell—Decree for specific performance—Deed of conveyance obtained in execution—Subsequent suit for recovery of possession against the vendors—Suit not barred.* Where the plaintiff, who had obtained in a previous suit a decree against the defendants for specific performance of an agreement to sell certain immoveable property to the plaintiff and had got a sale deed in his favour in execution of the decree, instituted the present suit for the recovery of possession of the lands from the defendants. *Held*, that the suit was not barred by O. II, r. 2 of the Civil Procedure Code (Act V of 1908). At the time the plaintiff brought the previous suit, the right to possession of the lands was not vested in him, as he acquired that right only on the execution of the deed of conveyance. *Narayana Kavirayan* v. *Kandasami Goundan, I. L. R. 22 Mad. 24*, disapproved. *Rangayya Goundan* v. *Nanjappa Rao, I. L. R. 24 Mad. 491*, explained. *Nathu valad Pandu* v. *Budhu valad Bhika, I. L. R. 18 Bom. 537*, followed. KRISHNAMMAL *v.* SOUNDARARAJA AIYAR (1913) . **I. L. R. 38 Mad. 698**

3. ——— *Specific Relief Act (I of 1877), s. 42—Suit for declaration—Previous decree between third parties—Plaintiffs not parties—Suit to declare that the decree is collusive and not binding on plaintiffs, if maintainable.* The plaintiffs

CIVIL PROCEDURE CODE (ACT V OF 1908) —*contd.*

——— **O. II**—*concld.*

sued for a declaration (*i*) that they were the owners of the suit properties as the reversioners of one *N*. who was the last male owner ; and (*ii*) that a decree obtained by the first defendant against the second in respect of the properties in another suit to which the plaintiffs were not parties, was collusive and was not binding on the plaintiffs. The plaintiffs had already brought a suit in the same Court against the present defendants to recover possession of some other properties as the reversionary heirs of *N*, but did not include therein the properties claimed in the present suit, though the defendants were in possession of them at the time of their previous suit. The plaintiffs alleged that they came into possession of the properties subsequently to the previous suit. The defendants contended that the suit was barred under O. II, r. 2 of the Civil Procedure Code, and that the suit for a declaration that the decree passed in the suit between the first and the second defendants was collusive and not binding on the plaintiffs, was not maintainable. *Held*, that the present suit was not barred under O. II, r. 2 of the Civil Procedure Code. *Held*, further, that a suit for a declaration that a decree obtained by the first defendant against the second defendant was collusive and not binding on the plaintiffs was maintainable under s. 42 of the Specific Relief Act. NAGANNA *v.* SIVANAPPA (1914)

I. L. R. 38 Mad. 1162

4. ——— *Previous suit for possession of lands only—Claim for past mesne profits, not included—Subsequent suit for the same, not barred—Cause of action for mesne profits different from that for possession of land.* Claim for possession and claim for *mesne* profits are separate causes of action and have been always so treated under the Code of Civil Procedure. Where a plaintiff sued for possession of lands only when he might have joined in the same action claims for *mesne* profits and damages, it is open to him to bring a subsequent suit against the same defendants for the profits which became payable before the institution of the former suit and which might have been included in such suit. *Monohur Lall* v. *Gouri Sunkur, I. L. R. 9 Calc. 283, Tirupati* v. *Narasimha, I. L. R. 11 Mad. 210, Lalessor Babui* v. *Janki Bibi, I. L. R. 19 Calc. 615*, and *Gutta Saramma* v. *Maganti Raminedu, I. L. R. 31 Mad. 405*, followed. PONNAMMAL, *v.* RAMAMIRDA AIYAR (1914) . . . . **I. L. R. 38 Mad. 829**

——— **O. III, r. 1**—*Recognised agent, if has right of audience.* A recognised agent as such has no right of audience. HURCHAND RAY *v.* BENGAL-NAGPUR RAILWAY Co. (1914)

19 C. W. N. 64

——— **O. V, rr. 15, 17, 27**—

See SUMMONS . **I. L. R. 42 Calc. 67**

——— **O. V, rr. 17, 19**—*Service of summons on purdanashin ladies who cannot be approached by serving peon—Powers and duties of the Court under—Service of summons on purdanashin ladies by registered post—O. IX, r. 13—Purdanashin lady, ex parte decree against, setting aside of—Unrebutted statement on oath as to absence of knowledge of suit.* The plaintiff-respondent instituted a suit against several persons to recover a sum of money alleged to be due from them as members of a partnership concern. The suit was decreed *ex parte*. Two of the defendants, the appellants, who were *purdanashin* ladies and the widows of an alleged member of the firm, made an application to set aside the decree on the ground that the summons had not been duly served on them and they had no knowledge of the suit and they were at any rate prevented by sufficient cause from appearing when the suit was called on for hearing. It appeared that the peon could not obtain access to the appellants and there was no authorised agent to receive summonses on their behalf and that there were no adult members of the family of the ladies upon whom the service could be made. The copies of the summons and plaint were in consequence affixed by the serving peon on the main gate of the dwelling house. It further appeared that there was on the record a *vakalatnama* purporting to be signed by one of the appellants and an officer of the other appellant on her behalf which authorised a pleader to oppose the plaintiff's application for attachment before judgment. The appellants on being examined stated on oath that they had no knowledge of the suit and the *vakalatnama* was not put to them and the plaintiff did not take any steps to prove what purported to be the signature of one of the appellants on the *vakalatnama* nor did he establish that the other appellant had authorised her officer to sign the *vakalatnama* on her behalf : *Held*, that r. 17, O. V of the Civil Procedure Code is applicable to a case of the present description where the serving officer is not able to obtain access to a *purdanashin* lady who has to be served and cannot deliver or tender a copy of the summons to her. Where it is impossible for the serving officer to obtain access to the person to be served either by reason of the custom of the country or for any other reason the case may be held to be covered by the description in r. 17 "where the defendant cannot be found by the serving officer" and the requirements of that Rule having been fulfilled the appellants could not succeed on the ground that the summonses were not duly served on them within the meaning of r. 13 of O. IX of the Code. R. 19 of O. V imposes upon the Court the duty to satisfy itself that service has been properly effected and it is open to the Court even when there has been a technical compliance with the provisions of r. 17 to order service in another mode if the Court thinks fit to do so in the interests of justice. The Court may in a case of this description direct the issue of summons to *purdanashin* ladies by means of notice sent by registered post.

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— **O. V**—*contd.*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. V**—*concld.*

so that the cover may in due course reach the lady herself. In the present case the plaintiff-respondent having failed to rebut the allegation on oath made by the appellants, the High Court held on a consideration of the circumstances of this case that it was established that the appellants had no knowledge of the suit and they were prevented by sufficient cause from appearing when it was called on for hearing and the *ex parte* decree was set aside as against them. KSHIRODE SUNDARI DASI *v.* NABIN CHANDRA SAHA (1915)

19 C. W. N. 1231

——— **O. VIII, r. 6**—*Suit by an Inamdar against a Khatedar for recovery of sums—Set-off claimed in a capacity different from that in suit not allowable.* In a suit brought by an Inamdar against a Khatedar for the recovery of dues in respect of certain immovcable property payable by the Khatedar, the defendant, as a *pujari* (worshipper), claimed to set off the stipend payable to him by the plaintiff. *Held*, that the defendant could not claim the set-off which was due to him in a different capacity from that in which he held as tenant or Khatedar of the plaintiff. MADHAVRAO MORESHVAR *v.* RAMA KALU (1914)

I. L. R. 39 Bom. 131

——— **O. IX, r. 5 ; O. XXIII, r. 1**—

See CONTRACT ACT (IX OF 1872), ss. 134, 137 . . **I. L. R. 39 Bom. 52**

——— **O. IX, rr. 8 and 9**—When the plaintiff and his pleader are both absent on the day fixed for the hearing of a case and the Court does not intend to give them another opportunity of appearing it ought not to decide the suit on the merits but should dismiss it for default of appearance. PHUL KUAR *v.* HASHMATULLAH KHAN (1915)

I. L. R. 37 All. 460

——— **O. IX, r. 13**—

1. ——— *Decree ex parte—Application to set aside decree—Appeal—Decree confirmed in appeal before hearing of application to set it aside.* When the High Court has once confirmed a decree on appeal, it is not open to the Court which passed the decree to entertain an application to set the decree aside, and it makes no difference that the application to set the decree aside was filed before the appeal was disposed of. MATHURA PRASAD *v.* RAM CHARAN LAL (1915)

I. L. R. 37 All. 208

2. ——— *Compromise petition purporting to be by all the defendants filed by those actually present in Court—Decree passed on such compromise petition—Subsequent repudiation by defendants not present at filing of petition—Jurisdiction of Court to set aside decree as ex parte decree under O. IX, r. 13.* The petitioners instituted a suit for declaration of their title to, and for possession of, certain lands. Two of the defendants (Nos. 4 and 5) filed a petition of compromise and asked for a decree, so far as they were concerned, on that compromise and an *ex parte* decree against the other defendants. The Court, however, ordered fresh service on the other defendants, and subsequent thereto defendants Nos. 4 and 5 appeared in Court with a petition of compromise purporting to be executed by defendants Nos. 1 to 3 as well as by themselves. On this petition a decree was made in terms of the compromise. Afterwards defendants Nos. 1 to 3 put in a petition to the Court stating that defendants Nos. 4 and 5 had no authority to present the petition of compromise on their behalf, that no summons had been served on them, and that the petition was fraudulently represented as being made by them. The Court acting under O. IX, r. 13, Civil Procedure Code, set aside the decree and ordered a re-trial of the case. *Held*, that the Judge when he made his order was under the impression that all the parties in the case were before him and that the petition was the petition of all the parties; consequently in granting the petition he did not intend to make it *ex parte* and the decree could not be treated as an *ex parte* one, and consequently O. IX, r. 13, Civil Procedure Code, did not apply. DAMODAR MISRA *v.* HRISHI NAIK (1914)

19 C. W. N. 118

——— **O. IX, r. 13 ; O. XXXII, r. 3**—

——— *Guardian ad litem—Illusory appointment of guardian—Competence of minors to have a decree passed without their being represented, set aside.* A suit was brought against certain minor defendants naming as guardian *ad litem* their uncle, who was also a defendant. The uncle refused to act as guardian *ad litem* and stated that the minors lived with their mother. No notice was served upon the mother, but upon the application of the plaintiffs the Court Amin was appointed guardian *ad litem* of the minors. The plaintiffs did not deposit any amount for the expenses of the guardian, who did not take any steps to defend the suit or to inquire whether there was a defence. A decree was passed *ex parte* against the minors, and an application on their behalf, through their mother, to have the case restored was rejected. The Courts below found that the decree was not void and dismissed the suit. *Held*, that in the circumstances above set forth the minors were entitled to a declaration that the decree was null and void as against them. *Walian* v. *Banke Behari Pershad Singh, I. L. R. 30 Calc. 1021*, and *Munnu Lal* v. *Ghulam Abbas, I. L. R. 32 All. 287*, distinguished. *Held*, also, that the minors were not debarred from bringing this suit by reason of their not having applied to have the *ex parte* decree set aside under O. IX, r. 13, of the Code of Civil Procedure. BHAGWAN DAYAL *v.* PARAM SUKH (1915) . **I. L. R. 37 All. 179**

——— **O. XIV, r. 2**—*Scope and application of rule—Issues of law, determination of, in the beginning—R. 4, O. VII—Suit by plaintiff in*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

O. XIV—*concld.*

representative capacity, character of plaintiff if should be stated in cause title—Amendment of plaint by leave of Court, effect of. On the 30th July 1886, the plaintiff was declared to be a disqualified proprietor and the Court of Wards took charge of her estate. On the 7th June 1890, by a *kobala* the Court of Wards sold to the father of the defendant all the properties in suit except two mauzas. By a further *kobala*, dated 11th February 1901, the two mauzas were similarly conveyed. On the 1st August 1911, the Court of Wards released the property of the plaintiff from its charge. The plaintiff on 31st May 1912 sued for a declaration that the two *kobalas* were invalid and for restoration of possession of the properties concerned. As regards the two mauzas sold in 1901, the plaint originally did not show in the cause title the character in which the plaintiff sued, although the body of the plaint and the prayers made it clear that she sued as the *shebait* of certain idols. Subsequently with the leave of the Court the cause title was amended so as to show that the plaintiff sued on behalf of herself and as *shebait* and the necessary amendments in the body of the plaint were made. On the application of the defendant the Trial Judge tried the issues of law first and dismissed the suit. *Held*, that the application of r. 2, O. XIV, Civil Procedure Code, is not confined only to cases in which the issues of fact had not been settled. The rule also applies to cases where the Court has not postponed the settlement of the issues of fact, and the course adopted by the Trial Judge in disposing of the issues of law was not illegal. That O. VII, r. 4, does not require that when the plaintiff sues in a representative capacity that fact should be stated in the cause title of the plaint although that is a convenient place to state it. The amendments made in the plaint by the leave of the Court could not in any view amount to an addition or substitution of a new plaintiff within the meaning of s. 22 of the Limitation Act. That Art. 91 of the Limitation Act had no application to the suit in so far as it was instituted by the plaintiff as *shebait* of the idols. KUARMONI SINGHA *v.* WASIF ALI MEERZA (1915) . . . **19 C. W. N. 1193**

O. XX, r. 7—

See LIMITATION . **I. L. R. 37 All. 527**

O. XXI, r. 2, sub-rr. 1, 2 and 3—*Adjustment of decree not certified if can be recognised by Court executing decree—Estoppel, if applies between decree-holder and judgment-debtor—Estoppel, if can be invoked to nullify an express statutory provision—Limitation Act (IX of 1908), Sch. I, Art. 174—Application for notice on decree-holder to show cause why adjustment should not be recorded, period of limitation for.* A decree-holder applied for execution on the 1st June 1912. On behalf of the judgment-debtors objection was taken on the 27th June 1912 to the effect that the decree could not be executed inasmuch as it had been adjusted on the 11th February 1912 and, under the adjustment, the decree-holder had agreed to accept the judgment debt in certain specified instalments. This adjustment was not recorded as prescribed in sub-rr. 1 and 2 of O. XXI, r. 2. *Held*, that as the adjustment had not been recorded, the Court executing the decree could not recognise it under O. XXI, r. 2, sub-r. 3. That even if the application of the 27th June were treated as an application for the issue of notice to the decree-holder to show cause why the adjustment should not be recorded, it was barred by limitation under Art. 174 of the Second Schedule of the Limitation Act. *Held* (as to the contention that the decree-holder having subsequent to the alleged adjustment received payments in accordance therewith was estopped and the Court was bound to determine whether there had or had not been an adjustment), that this argument was clearly opposed to the provisions of sub-r. 3, and the doctrine of estoppel cannot be invoked to nullify an express statutory provision. JOGENDRA NATH SARKAR *v.* PROBHAT NATH CHATTERJEE (1913) . . . **19 C. W. N. 650**

O. XXI, r. 12—

See EXECUTION OF DECREE.
I. L. R. 37 All. 527

O. XXI, rr. 35, 97—

See BAILIFF . **I. L. R. 42 Calc. 313**

O. XXI, r. 52—

See DECREE . **I. L. R. 39 Bom. 80**

See RATABLE DISTRIBUTION.
I. L. R. 38 Mad. 221

O. XXI, r. 63—*Order in favour of the claimant—Alienation by the claimant subsequently—Suit by decree-holder subsequent to the alienation to set aside the order—Lis pendens, doctrine of, if applicable—Pendency of proceedings—Suit, a form of appeal—Alienee, joined as party after one year from the date of order, not a necessary party—No bar of limitation—Limitation Act (IX of 1908), s. 22, cls. 1 and 2.* A purchaser of property from a claimant, after an order has been passed in his (claimant's) favour but before a suit under O. XXI, r. 63 was instituted, is an alienee *pendente lite* and is therefore not a necessary party to the suit; and if the necessary parties had been brought within one year, the alienee cannot advance the plea of limitation as s. 22, cl. (2) of the Indian Limitation Act expressly excluded the operation of cl. (1) in such cases. A suit brought under O. XXI, r. 63 of the Code of Civil Procedure (Act V of 1908) is a mere continuation of the proceedings in a claim petition, and all alienations during the continuance of the proceedings originated by the claim petition till the disposal of the suit brought to set aside the order passed on the claim petition are affected by the doctrine of *lis pendens* formulated in s. 52 of the Transfer of Property Act. Suits of this class

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXI**—*contd.*

though called original suits, are not in their essence original actions but merely forms of appeal allowed by the Civil Procedure Code to be brought in the guise of original suits. *Phul Kumari* v. *Ghanshyam Misra, I. L. R. 35 Calc. 202*, followed. *Veera Pannadi* v. *Karuppa Pannadi, Mad. L. T. 154, Harishankar Jebhai* v. *Naran Karsan, I. L. R. 18 Bom. 260, Keshori Mohun Rai* v. *Hursook Dass, I. L. R. 12 Calc. 696*, and *Settappa Goundan* v. *Muthia Goundan, I. L. R. 31 Mad. 268*, referred to. KRISHNAPPA CHETTY *v.* ABDUL KHADER SAHIB (1913) . **I. L. R. 38 Mad. 535**

——— **O. XXI, r. 66**—*Setting aside a sale—Material irregularity in publication of sale proclamation—Understatement of revenue due on the land—Undervaluation of property—Statement of the same by the decree-holder—No objection by the judgment-debtor to the amount of Government revenue or valuation—Mistake of the judgment-debtor as to interest in the property sought to be brought to sale—Duty of Courts in India in conducting sales in execution—Mistake of judgment-debtor due to action of decree-holder—Rule of estoppel of judgment-debtor, no application—Right of auction-purchaser before and after confirmation of sale—No absolute right for confirmation of sale.* Though it was not incumbent upon the Court to state the value of the property in a proclamation for sale, a materially incorrect statement of the revenue or of the value of the property where the value is stated would constitute an irregularity which if it caused substantial injury to the judgment-debtors, would entitle him to have the sale set aside. Where the judgment-debtor's act in not objecting to the statement of the peshkash and in stating the value on the footing of the peshkash being correctly stated by the decree-holder was due to a mistake of fact regarding what the Court intended to sell, the judgment-debtor should not be held to be estopped from objecting to the sale on the ground of material irregularity. A party who does not raise an objection to the proclamation which he ought to have raised is estopped from complaining of an irregularity resulting from an erroneous statement which he should have corrected. *Gridhari Singh* v. *Hurdeo Narain Singh, L. R. 3 I.A. 230*, and *Olpherts* v. *Mahabir Pershad Singh, L. R. 10 I.A. 25*, referred to. *Arunachellam* v. *Arunachellam, I. L. R. 12 Mad. 19*, and *Behari Singh* v. *Mukhat Singh, I. L. R. 28 All. 273*, referred to. In India an execution sale is an act of the Court. Where an act of a Court is induced by the mistake of parties, it may be set aside. But the Court will not apply the rule of estoppel to cases where the judgment-debtor was not aware of the facts to which he was bound to object. KALAHASTI, RAJA OF *v.* MAHARAJA OF VENKATAGIRI (1913)

I. L. R. 38 Mad. 387

——— **O. XXI, r. 89**—

1. ——— *Execution of decree—Application to set aside the sale within limitation—Money tendered but not received through Treasury Officer's action.* The judgment-debtor made an application under O. XXI, r. 89, of the Code of Civil Procedure to set aside a sale held in execution of a decree on the last day of limitation. The money required to be paid was tendered to the Treasury Officer shortly before 3 P.M., but he refused to take it because there was not sufficient time to count it and also because he thought that it could be paid at any time within three days of the tender. The judgment-debtor paid it the next day, which was beyond thirty days after the sale. *Held*, that the judgment-debtor having done all that lay in his power to deposit the money in time and having been prevented by the action of the Treasury Officer, should be taken to have made the payment within the time allowed by law *Mahomed Akbar Zaman Khan* v. *Sukhdeo Pande, 13 C. L. J. 467*, referred to. MUNNA LAL *v.* RADHA KISHAN (1915)

I. L. R. 37 All. 591

2. ——— *Sale of immoveable property in Court-auction—Subsequent private sale by judgment-debtor—Application by judgment-debtor to set aside auction-sale—No locus standi to apply—Order rejecting application—Revision petition to High Court under Civil Procedure Code (Act V of 1908), s. 115—Not maintainable though order erroneous.* Where after a sale in Court-auction of certain immoveable property, the judgment-debtor sold away all his rights in the same property to a stranger by a private sale, and subsequently applied under O. XXI, r. 89, of the Code of Civil Procedure (Act V of 1908) to set aside the auction-sale : *Held*, that the judgment-debtor had no *locus standi* to apply under O. XXI, r. 89, to have the sale set aside. *Anantha Lakshmi Ammall* v. *Kunnanchankarath Sankaran Nair, (1913) Mad. W. N. 101*, referred to. *Ishar Das* v. *Asaf Ali Khan, I. L. R. 34 All. 186*, followed. *Per* SADASIVA AYYAR, J.—A Civil Revision Petition under s. 115 of the Code of Civil Procedure does not lie against an order of the Lower Court rejecting an application under O. XXI, r. 89, though the order was erroneous in law, as the lower Court did not act illegally or beyond its jurisdiction or with material irregularity in arriving at the decision. *Per* SPENCER, J.—Neither an amendment of the petition nor the presentation of a fresh petition by the private purchaser could be allowed by the High Court to be made, as he was not a party to the proceedings in the lower Court and more than one year had expired after the time allowed by Art. 166 of the Limitation Act (IX of 1908) for filing a petition in the lower Court. SUBBARAYUDU *v.* LAKSHMINARASAMMA (1913) . **I. L. R. 38 Mad. 775**

——— **O. XXI, r. 90**—

1. ——— *Application to set aside sale dismissed for default—Dismissal of application for restoration—Appeal, if lies.* An

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— O. XXI—*contd.*

application to set aside a sale under r. 90 of O. XXI of the Civil Procedure Code having been dismissed for default, the applicant applied for restoration of the case, but this application was refused: *Held*, that no appeal lay against the order refusing to restore the case. Cl. (*e*) to r. 1 of O. XLIII of the Code did not apply to this order. S. 141 of the Code which replaces s. 647 of Act XIV of 1882 has not effected any alteration in the law. On the date fixed for hearing of appellant's application to set aside a sale, the appellant came to Court and finding the Judge engaged in the trial of another suit, left the Court and went on another business leaving no instructions to his pleader. Returning later, he found that his case had been called on in the meanwhile and dismissed for non-prosecution. *Held*, that there were no grounds for restoring the case. *Manilal Dhunji* v. *Gulam Hosain, I. L. R. 13 Bom. 12*, and *Ismail Ibrahim* v. *Jan Mahmed, 10 Bom. L. R. 904*, relied on. *Somayya* v. *Subbama, I. L. R. 26 Mad. 599*, and *Lalta Prasad* v. *Ram Karan, I. L. R. 34 All. 426*, not followed. CHARU CHANDRA GHOSH *v.* CHANDI CHARAN RAY CHOUDHURY (1914)

19 C. W. N. 25

2. ——— *Step in execution of decree for arrears of rent—Non-transferable occupancy holding, transferee of a portion of, if entitled to apply for reversal of sale.* A transferee of a portion of a non-transferable occupancy holding is entitled to apply for reversal of a sale in execution of a decree for arrears of rent obtained by the entire body of landlords. The rule formulated in r. 90 of O. XXI of the Civil Procedure Code of 1908 has a wider scope and is of a more comprehensive character than the rule laid down in s. 311 of the Code of 1882. ABDUL AZIZ *v.* TAFAZUDDIN SHEIKH (1914) . . **19 C. W. N. 326**

——— O. XXI, rr. 90, 91 and 93—

See LIMITATION ACT (IX OF 1908), s. 22.

I. L. R. 38 Mad. 837

——— O. XXI, r. 91—*Auction-purchaser induced to buy property of small value by misrepresentation—Remedy.* Where it appeared that it was known to the decree-holder that 1 anna out of a 1 anna 16 krants share put up by him for sale in execution of his decree had been previously sold in execution of a mortgage decree: *Held*, that it was not open to the purchaser at the sale who got 16 krants at least of the property purported to be sold to apply under O. XXI, r. 91, of the Civil Procedure Code, on the ground that the judgment-debtor had no saleable interest in the property; though if he was induced to make the purchase by fraud, he might not be without other remedies. *Naharmul Marwari* v. *Sadut Ali, 8 C. L. R. 468*, *Protap Chandra Chakrabartty* v. *Panioty, I. L. R. 9 Calc. 506*, *Ram Coomar Dey* v. *Shushee Bhooshan Ghose, I. L. R. 9 Calc. 626*, *Sonaram Das* v. *Mohiram Das, I. L. R. 28 Calc. 235*, *Durga Sundari* v. *Govinda Chandra, I. L. R. 10 Calc. 368*, *Sant Lal* v. *Ramji Das, I. L. R. 9 All. 167*, and *Birj Mohan Thakur* v. *Rai Umanath Chaudhuri, I. L. R. 20 Calc. 8: L. R. 19 I. A. 154*, referred to. SHEOGOBINDA SINGH *v.* DHANUKDHARI SINGH (1915) . . **19 C. W. N. 1291**

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

——— O. XXI—*concld.*

——— O. XXII, r. 10—

1. ——— *Lease, forfeiture of—Insolvency of a defendant—Vesting of his estate and effects in the Official Assignee—Refusal of Official Assignee to defend the suit—Inability of defendant to defend independently of the Official Assignee—Practice.* In a suit by the lessor against the lessee for forfeiture of a lease by reason of breaches of covenant, no cause of action survives against a defendant who has become insolvent and whose estate has vested in the Official Assignee. If in such a case the Official Assignee refuses to defend a suit affecting the estate of the insolvent, the latter cannot defend independently of the Official Assignee. TRIBHOVANDAS NAROTAMDAS *v.* ABDULALLY HAKIMJI (1914) . **I. L. R. 39 Bom. 568**

2. ——— *Preliminary decree—Sale of mortgaged property—Right of purchaser to be made a party to the suit.* A preliminary decree for redemption of a usufructuary mortgage was passed in 1908, but there was an appeal, and the decree of the High Court, which confirmed the decree of the Court below, was passed in 1910, and the time for payment of the mortgage money was extended. After the time fixed for payment had expired, but before the final decree was passed, the plaintiff decree-holder sold the mortgaged property, leaving with the purchasers a sum sufficient for redemption. *Held*, that the suit was still pending at the time of the sale and the purchasers entitled to have their names entered in the record as plaintiffs. *Bhugwan Das Khettry* v. *Nilkanta Ganguli, 9 C. W. N. 171*, referred to. MUHAMMAD MASIH-ULLAH *v.* JABAO BAI (1915)

I. L. R. 37 All. 226

——— O. XXIII, r. 1—*Appellate Court, powers of—Withdrawal of suit.* *Held*, that an Appellate Court can, under O. XXIII, r. 1, of the Code of Civil Procedure (1908), give a plaintiff, whose suit has been dismissed by the Court of first instance, permission to withdraw his suit and give him leave to institute a fresh one. *Ganga Ram* v. *Data Ram, I. L. R. 8 All. 82*, followed. *Choragudi Chinna Kotayya* v. *Raja Varada Raja Appa Row, 27 Mad. L. J. 244*, and *Eknath* v. *Ranoji, I. L. R. 35 Bom. 261*, dissented from. AFZAL BEGAM *v.* AKBARI KHANUM (1915)

I. L. R. 37 All. 326

——— O. XXIII, r. 3—

1. ——— *Compromise—Terms outside the scope of the suit, recorded in the decree—Decree so far as it relates to the suit, effect of—Terms forming consideration for those relating to the subject matter of the suit—Decree, not ultra vires*

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

O. XXIII—*contd.*

—Objection in execution, maintainability of—Contract Act (IX of 1872), ss. 38 and 54—Reciprocal promises—Non-performance by one party wrongfully —Consequent non-performance by the other, rightfully, effect of—Contract at end—Compensation—Offer of performance, essentials of—Conditional offer —Offer to release without executing release deed, insufficient. The plaintiff sued to recover a sum of money on a simple money-bond executed by the first defendant and the father of the second and third defendants. The parties entered into a compromise by which the disputes between them, including the claim in the suit, were adjusted and a decree was passed in the suit in accordance with the compromise 'so far as it related to the suit.' Under the compromise the defendants agreed to get a release of certain properties which had fallen to the share of the plaintiff in a partition between the plaintiff and the first defendant and some other properties purchased by the former from the latter, from the claims of a mortgagee (decree-holder) of the same, on the plaintiff depositing in Court within a certain time a sum of money for payment to the mortgagee towards his decree. The plaintiff failed to deposit the amount. The defendants gave notice to the plaintiff, by a posted letter offering to get a release of the properties if the plaintiff paid the amount in one week, but the plaintiff did not pay the amount. . The third defendant took an assignment of the mortgage-decree, brought the properties to sale in execution and purchased them in auction. The defendants applied in execution of the compromise-decree to recover a sum of money as due to them under the compromise, alleging that they had performed or offered to perform the conditions laid on them under the compromise. The plaintiff contended that the defendants could not recover the amount as the claim for it could not be deemed to have been included in the decree, and if it were included the decree was *ultra vires ;* and further that the defendants, having failed to fulfil their part of the agreement, were not entitled to enforce the other terms of the compromise. *Held,* that all the terms recorded in the compromise-decree which formed part of the consideration for the adjustment of the subject-matter in the suit, must be deemed to be part of the decree and can be enforced in execution proceedings. A compromise-decree, even if it includes matters beyond the scope of the suit, is not *ultra vires,* and no objection can be taken to the enforcement of the same in execution proceedings. When the parties to a contract fail to perform their reciprocal promises, the one wilfully and the other because he was not bound to fulfil his part unless the former had fulfilled his preliminary part, the contract itself comes to an end by the acts of both the parties except for the purpose of enabling the innocent party to claim compensation from the other. An offer of performance must be unconditional, if it is to have the same effect as performance. A mere offer by a posted letter that the party liable was

CIVIL PROCEDURE CODE (ACT V OF 1908) *contd.*

O. XXIII—*concld.*

ready to execute a release without having a document of relase ready, is not a valid offer under s. 38 of the Contract Act. *Held* (on the facts of the case), that though the plaintiff failed to pay the money into Court, as the defendants failed to fulfil their part of the agreement to make a valid unconditional offer to perform the same, and as the defendants disabled themselves from performing their part by reason of the purchase of the properties by the third defendant, the defendants were not entitled to enforce the other terms included in the compromise-decree. SABAPATHY *v.* VANMAHALINGA (1914)

I. L. R. 38 Mad. 959

2. ——— *Lawful compromise—Hindu Law—Office of archaka, alienation of—Custom, validity of—Disqualification of females to perform duties of—Right of females to inherit—Performance of duties by proxy—Public policy—Undue influence—Low price, effect of—Contract Act (IX of 1872), s. 16, cl. (2).* Where the parties to a suit instituted in respect of a half share in the *archaka* miras in a Saivite temple, entered into a compromise during the pendency of a Second Appeal in the case, by which one of the parties alienated for a pecuniary benefit a portion of his right to the office in favour of the other party (who was a female), and the latter applied by a petition to the High Court to pass a decree in accordance with the compromise : *Held,* that the compromise was not lawful and that no decree could be passed in accordance therewith under O. XXIII, r. 3, of the Civil Procedure Code. *Per* SADASIVA AYYAR, *J.*—An alienation of a religious office by which the alienor gets a pecuniary benefit cannot be upheld, even if a custom is set up sanctioning such an alienation. It is the settled custom that females by reason of their sex are permanently disqualified from performing the duties of an *archaka* in a Saivite temple. A person, who is permanently disqualified to do the duties of an office, cannot inherit the office while at the same time delegating the duties to others, whether the permanent disqualification is the result of conversion to any other religion or insanity or sex. A trusteeship for secular purposes can be held by a female. The fact that a person is obliged to part with his property for what he considers an unduly low price owing to his pressing necessities, is not a ground for holding that the contract is vitiated by undue influence. SUNDARAMBAL AMMAL *v.* YOGAVANAGURUKKAL (1914)

I. L. R. 38 Mad. 850

O. XXXIV—

See PALAS OR TURNS OF WORSHIP.

I. L. R. 42 Calc. 455

——— *Mortgage suit, application for decree absolute in—Limitation—Scope and effect of Order.* The decree nisi in a mortgage suit was made when the Civil Procedure Code of 1882 was in force. The application for making

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XXXIV**—*contd.*

the decree absolute was made more than 12 years after the date of the decree and after the Civil Procedure Code of 1908 came into operation. *Held*, that prior to the Code of 1908, there was no period of limitation within which a plaintiff was bound to apply for the order absolute for sale in a suit brought for sale of the mortgaged property, and the provisions of O. XXXIV of the First Schedule to the Code of Civil Procedure, 1908, which repealed ss. 85 to 90 of the Transfer of Property Act do not apply so as to take away a vested right which the plaintiff had of applying to have the decree for sale made absolute and the application filed by him was not barred by limitation. *Gopeshur Pal* v. *Jiban Chandra, 18 C. W. N. 804*, followed. KISTA BAR *v.* BANAMOYI DEBIA (1914) **19 C. W. N. 470**

——— **O. XXXIV, r. 1**—

See HINDU LAW—MORTGAGE. **I. L. R. 42 Calc. 1068**

——— **O. XXXIV, rr. 1, 14**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 61, 85 AND 99. **I. L. R. 38 Mad. 927**

——— **O. XXXIV, rr. 3, 6**—

See LIMITATION . **I. L. R. 42 Calc. 294**

——— **O. XXXIV, rr. 4, 5**—

See LIMITATION . **I. L. R. 42 Calc. 776**

——— **O. XXXIV, r. 5, cl.** (2)—*Limitation Act (IX of 1908), Sch. I, Art. 181, application under O. XXXIV, r. 5, cl. 2 if governed by—Mortgage suit, application for decree absolute in—Limitation—S. 5, circumstances justifying the application of—S. 14, if applies to appeals.* The plaintiff obtained a decree on a mortgage on the 28th July 1905, the date fixed for payment being 28th January 1906. On 31st May 1909, he applied for the decree being made absolute and that application was granted. Against this the defendant appealed and the case was remanded on the 7th March 1910. Against the order of remand there was an appeal to the High Court, but the proceedings continued in the first Court and was disposed of on the 19th September 1910, the Court holding that the application for decree absolute was barred by limitation. On the 21st April 1911 the High Court dismissed the appeal against the order of remand and on the 16th May 1911, the plaintiff appealed to the lower Appellate Court against the order of the 19th September 1910. *Held*, that an application under O. XXXIV, r. 5, cl. (2), comes within the scope of Art. 181. That the application for decree absolute was barred by limitation under Art. 181 of the Limitation Act. That the appeal to the lower Appellate Court against the order of the 19th September 1910 was also barred by limitation. That s. 14 of the Limitation Act has no application to appeals and the present case does not come within s. 5. BENI SINGH *v.* BERHAMDEO SINGH (1915) **19 C. W. N. 473**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*concld.*

——— **O. XXXIV**—*concld.*

——— **O. XXXIV, r. 6**—

See DECREE-HOLDER. **I. L. R. 38 Mad. 677**

——— **O. XXXIV, r. 14**—

See MORTGAGE . **I. L. R. 42 Calc. 780**

——— **O. XXXVII, r. 2**—

See APPEAL . **I. L. R. 42 Calc. 735**

——— **O. XXXVIII, r. 5; O. XXXIX, r. 1, s. 94**—*Injunction—Malikana dues.* One *M. I.* mortgaged *malikana* dues from certain villages to one *N. N.* sued on his mortgage and obtained an order absolute for sale of the property. Later, he obtained an injunction restraining the judgment-debtor from receiving the *malikana* dues. *Held*, that the Court below was not justified in either attaching the *malikana* dues or restraining the judgment-debtor by injunction from receiving it inasmuch as all that the decree-holder was entitled to do under his decree, was to have the property sold. MUHAMMAD INAMULLAH KHAN *v.* NARAIN DAS (1915) . . . . **I. L. R. 37 All. 423**

——— **O. XLI, r. 3**—

See HINDU LAW—PARTITION. **I. L. R. 38 Mad. 556**

——— **O. XLI, r. 22**—*Cross-objections, memorandum of, by one respondent against another, maintainability of.* Under O. XLI, r. 22, Civil Procedure Code, one respondent can file a memorandum of cross-objections against another. *Jadunandan Prosad Singh* v. *Koer Kallyan Singh, 15 C. L. J. 61*, not followed. MUNISAMY MUDALY *v.* ABBU REDDY (1915) . **I. L. R. 38 Mad. 705**

——— **O. XLI, r. 23**—

See PENSIONS ACT (XXIII OF 1871), S. 6 . **I. L. R. 39 Bom. 352**

——— **O. XLI, r. 27; O. XLVII, r. 1**—

See APPEAL . **I. L. R. 42 Calc. 675**

——— **O. XLI, r. 27, cl. (b)**—*Additional evidence on appeal—Powers of the Appellate Court—Test to be applied for admitting—State of mind of the Judge, after hearing the appeal—No external standard—'Any other substantial cause,' meaning of.* Where a Subordinate Judge first heard an appeal and then passed an order for the admission of some additional documents in evidence on the ground that "it was necessary to have the documents before the Court to enable it satisfactorily to pronounce its judgments." *Held*, that the admission of the documents as additional evidence was permissible under O. XLI, r. 27 of the Code of Civil Procedure (Act V of 1908). The test laid

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XLI**—*concld.*

down under cl, (*b*) of O. XLI, r. 27, is not whether any tribunal would be unable to pronounce any judgment without production of the additional evidence in question but whether the mind of the Appellate Judge is in such a condition on the evidence on record that he requires any documents to be examined to enable him to pronounce judgment. The expression 'any other substantial clause' added in O. XLI, r. 27, confers a wide discretion on the Appellate Court to admit additional evidence when the ends of justice require it to be done. *Kessowji Issur* v. *G. I. P. Railway Company, I. L. R. 31 Bom. 381*, explained and distinguished. *Krishnama Chariar* v. *Narasimha Chariar, I. L. R. 31 Mad. 114*, referred to. *Andiappa Pillai* v. *Muthukumara Thevan, (1912) Mad. W. N. 450*, followed. *Subba Naidu* v. *Ethirajammal, 22 Mad. L. J. 14*, dissented from. AMBUJA AMMAL *v.* APPADURAI MUDALI (1912) . . . . **I. L. R. 38 Mad. 414**

——— **O. XLI, r. 33**—*Plaintiff claiming alternative reliefs obtaining a decree—Right of appeal.* A plaintiff who claims for alternative reliefs in his plaint can prefer an appeal although he obtained a decree. O. XLI, r. 33, confers on the Appellate Court the power to pass such decree as ought to have been passed. BISWANATH GORAIN *v.* SURENDRA MOHAN GHOSH (1913) **19 C. W. N. 102**

——— **O. XLIII, r. 1**—*Appeal—Order dismissing an application to be substituted in an appeal in place of the original plaintiff. Held,* that an order dismissing an application to be brought upon the record as a plaintiff is not a decree and no appeal lies against such an order. DUMI CHAND *v.* ARJA NAND (1915) . **I. L. R. 37 All. 272**

——— **O. XLV, r. 15**—*Privy Council—Restoration of property pending appeal to the Privy Council—Procedure.* The word 'execution' as used in O. XLV, r. 15, was intended to cover case of restitution as well as a case of enforcement of a decree for possession or the like passed for the first time in the case on an appeal to His Majesty in Council, and a person who desires to obtain execution of any kind, whether by way of restitution or otherwise, must apply in the first instance to the Court indicated by r. 15. A decree was passed by the High Court against *B* who appealed to the Privy Council. During the pendency of the appeal *D* and others obtained possession of the property in suit from *B*. The Privy Council reversed the decree and *B* applied to the Subordinate Judge to restore him to possession of the property and filed a copy of the printed judgment of their Lordships of the Privy Council in proof of the fact that the judgment of the High Court had been reversed. *Held,* that the application should have been made to the High Court and the Subordinate Judge could not entertain it. *Held,* further, that the Subordinate Judge was not entitled to take any action

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— **O. XLV**—*concld.*

on the printed copy of the judgment of their Lordships of the Privy Council without proof that an order in Council had followed thereon. DAMODAR DAS *v.* BIRJ LAL (1915) **I. L. R. 37 All. 567**

——— **O. XLV, rr. 15 and 16; O. XXI, r. 16; ss. 37, 38 and 50**—*Privy Council, order of, transmitted to the original Court—Execution—Application to the original Court—Application by transferee of the decree—Competency of the original Court to entertain application—Power-of-Attorney, construction of.* Where an order of His Majesty in Council was transmitted under O. XLV, r. 15 of the Civil Procedure Code, by the High Court to the District Court as the Court which passed the first decree, the latter Court has jurisdiction to entertain an application made by an assignee of the decree under O. XXI, r. 16 of the Civil Procedure Code, to recognize the assignment and to allow him to execute the decree. It is established law that a Power-of-Attorney must be construed strictly. When an agent has a general Power-of-Attorney to act in some business or series of transactions, he may be assumed to have all usual powers, including the power to transfer decrees. *Palaniappa Chettiar* v. *Arunachella Chettiar, 23 Mad. L. J. 595*, distinguished. KRISHNA-BHOOPATHI DEO *v.* RAJA OF VIZIANAGARUM (1914) **I. L. R. 38 Mad. 832**

——— **O. XLVI, r. 7**—*Court of Small Causes, institution of suit in, before Judge not having Small Cause jurisdiction—Disposal of such suit as a small cause by successor in office having jurisdiction to try such suits—Reference under O. XLVI, r. 7, jurisdiction and powers of High Court in.* A suit valued at Rs. 90 was instituted in the Court of a Munsif having Small Cause Court power up to Rs. 50 and was registered as an ordinary suit. Before the suit came on for hearing the Munsif was succeeded by another Munsif who had Small Cause Court power up to Rs. 100. He tried the suit as a Small Cause Court suit and dismissed it. The defendant moved the District Judge who made a reference to the High Court under O. XLVI, r. 7, on the ground that the Munsif had no jurisdiction to try the suit as a Small Cause Court suit. *Held,* that on such a reference the High Court has full power to consider the matter on the merits in each case and may in the exercise of its discretion discharge such a reference even though in strict law the suit should have been tried under a different procedure. PARMESHWARI DASSI *v.* JAGAT CHANDRA DASS (1914) **19 C. W. N. 900**

——— **O. XLVII, r. 1**—

1. ——— *Review of judgment—Adducing of further evidence not sufficient ground.* An application was made to a District Judge for a review of his order that a certain property was not the property of an insolvent. The ground upon which the application was in substance made was that if another opportunity was given to the

CIVIL PROCEDURE CODE (ACT V OF 1908)— *contd.*

O. XLVII—*contd.*

applicants they would satisfy the Court that its former order was wrong. *Held*, that this was not a 'sufficient reason' for entertaining the application within the meaning of O. XLVII, r. 1 of the Civil Procedure Code. BINDA PRASAD *v.* RAGHUBIR SARAN (1915) . . **I. L. R. 37 All. 440**

2. ——— *Application for review—Limitation—Jurisdiction to entertain.* Where the Judge having decided to modify the decision of the First Court, erroneously passed a decree dismissing the appeal, but later on on the application of the landlord modified the decree and brought it in conformity with his judgment without notice to the tenants, and on the latter's appeal, the High Court directed the Judge to restore his previous decree leaving it open to the landlord to apply by way of review; and in pursuance of the High Court's order, the successor in office of the Judge restored the previous decree of his predecessor, and later on entertained an application for review made by the landlord; and purporting to act under s. 151 of the Civil Procedure Code passed a decree disallowing the custom so far as it permitted the tenants to appropriate the timber trees. *Held*, that the order to be reviewed was the order passed by the Judge in pursuance of the High Court's directions, both in regard to the limitation applicable to and the jurisdiction to entertain the application for review. GURAI KAR *v.* RANI KUARMONI SINGHA MANDHATA (1915) . . . **19 C. W. N. 1188**

——— **O. XLVII, r. 1; O. XLI, r. 19**—*Consent decree obtained by fraud, setting aside of—Inherent jurisdiction of Court—Such decree if can be set aside on review—Court-fee.* A decree passed by consent in an appeal was set aside on an application by the respondent under O. XLI, r. 19, Civil Procedure Code, the Court finding that the appellant got the service of the notice of the appeal suppressed and had a false fraudulent *vakalatnama* and a petition of compromise filed and that the respondent came to know about the compromise decree only after process in execution of the decree was taken out. *Held*, that O. XLI, r. 19, had no application to the case, but the decree could be set aside on review under O. XLVII, r. 1, and the Court had also inherent jurisdiction to set aside the decree. That it is an inherent power of every Court to correct its own proceedings, when it has been misled, and the order of the lower Court should not be set aside merely because it was passed under a wrong section. That as the order could be summarily set aside by the Court, no court-fee as on an application for review need have been paid on the application. *Annoda Debi* v. *Stevenson, 22 W. R. 290, Basangowda* v. *Churchigirigowda, I. L. R. 34 Bom. 408*, relied on. *Gulab Koer* v. *Badshah Buhadur, 13 C. W. N. 1197 : s. c. 10 C. L. J. 420*, referred to. PEARY CHOUDHURY *v.* SONOO DASS (1914) . . **19 C. W. N. 419**

——— **O. XLVII, rr. 1, 4**—*Review of judgment upon fresh evidence—Sufficient reasons not shown why the evidence was not produced at trial.* Where no sufficient reasons appeared on the affidavit upon which an application was made, after judgment, for a re-hearing upon additional evidence, to show why the proposed new evidence was not timeously submitted: *Held*, that the application was properly rejected. SHIVALINGAPPA BASAPPA SHINTRE *v.* REVAPPA (1915) . . **19 C. W. N. 762**

CIVIL PROCEDURE CODE (ACT V OF 1908)— *concld.*

O. XLVII—*concld.*

——— **O. XLVII, rr. 4 (b) (2), 7 (1) (b)—**

See REVIEW . **I. L. R. 42 Calc. 830**

——— **O. XLVII, r. 4; O. XLI, r. 11**—*Appeal summarily dismissed—Application for review if may be granted without notice to respondent—Practice—Hearing of appeal, if to be restricted to grounds on which review based—Bengal Tenancy Act (VIII of 1885), ss. 22, 85. 159, 161, 167.* The practice of the Court allowing applications for review of orders dismissing appeals under O. XLI, r. 11, of the Civil Procedure Code, to be granted without the issue of any notice to the Respondents is in conformity with the law and should not be departed from. *Semble:* The Division Bench which granted the review can alone consider the propriety of the order previously made and either maintain or vacate the original order of dismissal. *Semble:* An order granting a review of an order of dismissal under O. XLI, r. 11, without issue of notice to the respondent, if contrary to law, is not a nullity. At most it is one made irregularly or with material irregularity in the exercise of jurisdiction possessed by the Judges and cannot be ignored or vacated by the Bench hearing the appeal. When an application for review of an order of dismissal under O. XLI, r. 11, is granted the hearing of the appeal cannot be restricted to the grounds which were made the basis of the application for review. JANAKINATH HORE *v.* PRABHASINI DASI (1915) . **19 C. W. N. 1077**

——— **O. XLVII, rr. 4, 7—**

See APPEAL . **I. L. R. 42 Calc. 433**

——— **Sch. II, ss. 15 and 16—**

See AWARD . **I. L. R. 38 Mad. 256**

CIVIL RULES OF PRACTICE.

——— **s. 14—**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 192 . **I. L. R. 38 Mad. 295**

——— **r. 277—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 115 **I. L. R. 38 Mad. 650**

CLAIMANT.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 29, 62 AND 120. **I. L. R. 38 Mad. 972**

CO-CLAIMANTS.

——— *Litigation expenses paid by, if recoverable from others benefited by the result.* Where some of several claimants take proceedings for recovery for their own benefit, the fact that the result is also to the benefit of the other claimants does not create any implied contract or give the former an equity to be paid a share of the costs of the litigation by the latter. *Abdul Wahid Khan* v. *Shaluka Bibi, I. L. R. 21 Calc. 496*, and *Halima Bee* v. *Roshan Bee, I. L. R. 30 Mad. 526*, followed. RAMDHARI SINGH *v.* PERMANUND SINGH (1913) . **19 C. W. N. 1183**

CO-CONSPIRATORS.

——— **separate trial of—**

See CHARGE . **I. L. R. 42 Calc. 957**

CO-OPERATIVE SOCIETIES ACT (II OF 1912).

——— **ss. 19, 20—**

See CO-OPERATIVE SOCIETY.
I. L. R. 42 Calc. 377

CO-OPERATIVE SOCIETY.

——— *Charge—Priority—Co-operative Societies Act (II of 1912), ss. 19, 20—Attachment—Civil Procedure Code (Act V of 1908), s. 73.* Under s. 73 of the Code of Civil Procedure the claim of a co-operative society cannot be enforced unless they have a decree or charge under s. 20 of the Co-operative Societies Act (II of 1912), though under s. 19 of that Act the society might have raised an objection to the attachment by reason of other sections of the Code of Civil Procedure. ABDUL QUADIR *v.* SHAHBAZPUR CO-OPERATIVE BANK (1914) . **I. L. R. 42 Calc. 377**

CO-PARCENER.

See HINDU LAW—ADOPTION.
I. L. R. 38 Mad. 1105

See HINDU LAW—ALIENATION.
I. L. R. 38 Mad. 1187

See HINDU LAW—JOINT FAMILY.
I. L. R. 38 Mad. 684

See HINDU LAW—WILL.
I. L. R. 39 Bom. 593

CO-SHARER.

See ACQUIESCENCE.
I. L. R. 37 All. 412

COCAINE.

See POST OFFICE ACT (VI OF 1898), SS. 19, 61, 70 . **I. L. R. 37 All. 289**

COERCION.

See SPECIFIC RELIEF ACT (I OF 1877), S. 39 . . **I. L. R. 39 Bom. 149**

COLLECTOR.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 39 Bom. 580**

See INCOME TAX.
I. L. R. 42 Calc. 151

COLLECTOR OF BOMBAY.

——— **office of—**

See BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876), SS. 30, 35, 39, 40.
I. L. R. 39 Bom. 664

COLLECTOR'S CERTIFICATE.

See PENSIONS ACT (XXIII OF 1871), S. 6
I. L. R. 39 Bom. 352

COLLUSION.

See ASSIGNEE OF A MONEY-DECREE.
I. L. R. 38 Mad. 36

COLONIAL COURTS OF ADMIRALTY ACT, 1890 (53 & 54 VICT., C. 27).

——— **ss. 2 (3) (a), 35—**

See ARREST OF SHIP.
I. L. R. 42 Calc. 85

COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE (VI OF 1914).

——— **s. 3—**

See TRADING WITH THE ENEMY.
I. L. R. 42 Calc. 1094

COMMISSION.

See ADMINISTRATOR GENERAL'S ACT (II OF 1874), SS. 20, 52, 54.
I. L. R. 38 Mad. 1134

See PARDANASHIN, EXAMINATION OF.
I. L. R. 42 Calc. 19

COMMITMENT.

See APPROVER . **I. L. R. 42 Calc. 856**

——— *Duty of Magistrate to examine witnesses not produced but whom the accused is prepared to produce after process—Application to summon witnesses and for time to file documents made after the commitment order—Criminal Procedure Code (Act V of 1898), s. 208—Practice.* A Magistrate is bound, before passing an order of commitment, to examine all the witnesses produced by the accused but not those whom he is prepared to produce after process obtained for their appearance. *Queen-Empress* v. *Ahmadi, I. L. R. 20 All. 264*, referred to. *Emperor* v. *Muhammad Hadi, I. L. R. 26 All. 177*, dissented from. A Magistrate does not act illegally, under s. 208 of the Criminal Procedure Code, in refusing an application for summons on witnesses and for time to file documents, made after the order of commitment has been passed. EMPEROR *v.* SURATH (1914) . . **I. L. R. 42 Calc. 608**

COMMON CARRIERS.

——— **by sea—**

See BILL OF LADING.
I. L. R. 38 Mad. 941

COMPANIES ACT (VI OF 1882).

See COMPANY . **I. L. R. 39 Bom. 331**

——— **ss. 67, 96, 123**—*Contracts entered into by companies—Agreement to refer to arbitration—Whether seal of the Company necessary. Held*

COMPANIES ACT (VI OF 1882)—*concld.*

——— **s. 67**—*concld.*

that s. 96 of the Indian Companies Act, 1882, did not require that an agreement entered into by a company with a person who held a contract for the working of a certain portion of the company's business, to refer dispute which might arise between the parties to arbitration, should be made under the seal of the company. GANGES SUGAR WORKS, LD., *v.* NURI MIAH (1915) **I. L. R. 37 All. 273**

——— **ss. 128, 129**—

See COMPANY . **I. L. R. 39 Bom. 47**

——— **ss. 128, 131**—

See COMPANY . **I. L. R. 39 Bom. 16**

——— **s. 254**—

See COSTS . **I. L. R. 39 Bom. 383**

COMPANY.

See COSTS . **I. L. R. 39 Bom. 383**

See PROVIDENT INSURANCE.
I. L. R. 42 Calc. 300

——— **contracts by**—

See COMPANIES ACT (VI OF 1882), SS. 67, 96, 123 **I. L. R. 37 All. 273**

1. ——— *Directors—Appointment of a director as officer under the company—Personal interest of a director clashing with his duty to shareholders—Meeting of directors—No right for such director to vote on his appointment—Invalidity of appointment if no quorum of directors without counting him—Duties of an editor of a newspaper—Incapacity to perform—Propriety of dismissal for incapacity.* The directors of a company are agents of the company and trustees for the shareholders of the powers committed to them. A director who has an interest in the subject of discussion of a meeting of the directors in which his interests conflict with his duty to the shareholders is incompetent to vote. Hence even when the articles of association of a company may permit a director to hold any other office under the company in conjunction with his directorship and on such remuneration as the directors may fix, yet the appointment of a director to any other office at a meeting of the directors at which the quorum was made up only by counting him also as one present is not a valid appointment as the company did not have the unbiased and independent advice of at least such a number of the directors as would without him have made a quorum. A person appointed as co-editor of a newspaper should put forth or publish the paper and exercise a general supervision over the matter which is written for the paper or extracted as news. For this, certain literary and business qualifications are necessary. If he is absolutely incapable of performing these duties which the company has a right to expect of him, his dismissal on that account from co-editorship is right. RAMASWAMI IYER *v.* THE MADRAS TIMES PRINTING AND PUBLISHING CO., LTD. (1915)
I. L. R. 38 Mad. 991

COMPANY—*contd.*

2. ——— *Manager or managing agent's authority to buy liability of stranger or manager or manager's partner—Express and implied authority.* The manager or managing director of a Mill Company has no implied authority to purchase, on behalf of his mill, the liability of a stranger still less of their own manager or manager's partner in a private transaction of his own. MOTILAL SHIVLAL *v.* THE BOMBAY COTTON MANUFACTURING COMPANY, LD. (1915)
19 C. W. N. 621

3. ——— *Winding up—List of contributories—Minor—Estoppel by conduct after attaining majority—Indian Companies Act (VI of 1882).* *F*, a minor, applied for and was allotted certain shares in a limited company. He received dividends, and continued to do so after attaining majority. On the winding up of the company he was included in the list of contributories. *Held*, that, having intentionally permitted the company to believe him to be a shareholder and in that belief to pay him dividends since he attained majority, he was estopped by his conduct while a person *sui juris* from denying as between himself and the Company that he was a shareholder. View of Stirling *J.* in *Re Yeoland Consols, Limited (No. 2), 58 L. T. 922*, adopted. A minor may be a member of a company under the Indian Companies Act (VI of 1882). FAZULBHOY JAFFER *v.* THE CREDIT BANK OF INDIA, LD. (1914) . . . . **I. L. R. 39 Bom. 331**

4. ——— *Companies Act (VI of 1882), ss. 128, 129—Compulsory winding up—Creditor's petition—Company's inability to pay its debts.* The petitioner who was an assignee of certain debts due by the defendant Company to its late Secretary and Manager, demanded payment from the Company. The Company refused to pay on the ground that the demand was in respect of a claim which the Company honestly believed to be a fraudulent claim and unsustainable at law. The petitioner thereupon applied to the Court to compulsorily wind up the affairs of the Company. It was not shown that the Company was unable to pay its debt in full. The lower Court having rejected the application, the petitioner appealed. *Held*, that the application was rightly rejected, for the petitioner's object, in making the application, was to bring the pressure of insolvency proceedings to bear upon the Company in order to make it pay cheaply and expeditiously a heavy debt which it desired to dispute in the Civil Courts. The principle upon which a Company can be wound up on a creditor's application is simply its inability to pay its just debts. The inability is indicated by its neglect to pay after proper demand made and the lapse of three weeks. Such neglect must be judged by reference to the facts of each particular case. Where the defence is that the debt is disputed all that the Court has first to see is whether that dispute is on the face of it genuine or merely a cloak of the Company's real inability to pay just debts. TULSIDAS LALLU-

COMPANY—*concld.*

BHAI *v.* THE BHARAT KHAND COTTON MILL COMPANY, LTD. (1914) . **I. L. R. 39 Bom. 47**

5. ———— *Indian Companies Act (VI of 1882), ss. 128 and 131—Winding up—Petition for compulsory winding up of company by the Court—Grounds to be alleged in petition—Internal mismanagement of the company not such grounds—Admission of petition, discretion of Court as to—Shareholder, petition by.* Any ground alleged under s. 128 (*e*) of the Indian Companies Act in a petition for the winding-up of a company presented under s. 131 of that Act must be of a like nature to the specific grounds given under cls. (*a*), (*b*), (*c*) and (*d*) of s. 128. If any other grounds are alleged they do not fulfil the requirements of the Act. Allegations as to the internal management or mismanagement of a company are matters for the shareholders to deal with and do not call for the interference of the Court. A petition by a shareholder stands in a different footing to a petition by a creditor and should be more closely scrutinized on presentation. There is no obligation on the Court to admit a petition merely because it is presented. Not only must a petition allege facts which, if proved, would justify an order for winding up a company but even if it alleges such facts the Judge has a discretion to consider whether it is really *bonâ fide*. The Court may, if it thinks fit, refuse to admit a petition, or, as an alternative course, give the company concerned notice that a petition has been presented, so that it may take proceedings to restrain the petitioner from proceeding with his petition. PIONEER BANK LIMITED, *In the matter of the* (1914) . . **I. L. R. 39 Bom. 16**

COMPENSATION.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 959

See ELECTRICITY ACT (IX OF 1910), SS. 14, 19 . **I. L. R. 39 Bom. 124**

See LAND ACQUISITION ACT (I OF 1894), SS. 35 AND 36, CL. (2).
I. L. R. 37 All. 347

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900), SS. 5, 19.
I. L. R. 38 Mad. 589

———— **for wrong to land—**

See JURISDICTION.
I. L. R. 42 Calc. 942

———— **order for—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 250, 423.
I. L. R. 38 Mad. 1091

COMPLAINANT.

———— *Absence of complainant—Cause called on by mistake on date not fixed for hearing—Order of acquittal—Effect of such order—Jurisdiction of Magistrate to proceed with trial thereafter—Criminal Procedure Code (Act V of 1898), s. 247.* An order of acquittal under s. 247 of the Criminal Procedure Code passed by mistake on a date not fixed for the hearing of the case, for absence of the complainant, is a mere nullity, and does not debar the Magistrate from proceeding with the trial on the discovery of the error. *H. C. Proceedings, 17 Aug. 1875, 2 Weir 307*, followed. *Suresh Chandra Sinha* v. *Banku Sadhukhan, 2 C. L. J. 622*, distinguished. ACHAMBIT MANDAL *v.* MAHATAB SINGH, (1914) . **I. L. R. 42 Calc. 365**

COMPLAINANT—*concld.*

COMPLAINT.

See CRIMINAL PROCEDURE CODE, SS. 145 AND 522 . **I. L. R. 37 All. 654**

See FALSE AND VEXATIOUS COMPLAINT.

———— *Personal presentation of complaint—Complaint of defamation presented by alleged agent of pardanashin but not signed by her—Power of attorney not filed in Court—Necessity of examination of complainant before issue of process—Examination of pardanashin on commission—Criminal Procedure Code (Act V of 1898), ss. 198, 200, 503—"At once."* The words "at once" in s. 200 of the Criminal Procedure Code clearly indicate that a complaint must ordinarily be presented in person, otherwise a Magistrate should be very loath to take cognisance, and should not accept a complaint, not signed by the alleged complainant and not preferred by a person duly authorized to institute the specific complaint. No process can be issued against the accused, either by the Magistrate first taking cognisance, or by the Magistrate to whom the case is transferred, unless and until the Magistrate issuing it has first examined the complainant, and this course is the more necessary in the case of a *pardanashin* to enable the Magistrate to satisfy himself that the complaint is really her action. When a *pardanashin* makes a complaint, the Magistrate may take cognisance, if satisfied that it is really her complaint, by whatever means it reaches him. When it is presented on her behalf, the Magistrate may, under s. 503 of the Code, issue a commission for the examination required by s. 200. S. 503 is very wide in its terms, and refers not only to an inquiry or trial but to any other proceeding, and authorises the examination of any "witness," which includes a complainant. Where a written complaint of defamation was presented by an alleged agent on behalf of a *pardanashin*, but it was not signed by her, nor was any power of attorney filed before the Magistrate, and he issued process without examining the complainant: *Held*, that he had no power to issue process in such a case. ABHAYESWARI DEBI *v.* KISHORI MOHAN BANERJEE (1914)
I. L. R. 42 Calc. 19

COMPOSITION OF OFFENCE.

See CRIMINAL PROCEDURE CODE, S 345.
I. L. R. 37 All. 127

COMPROMISE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 48 . **I. L. R. 39 Bom. 256**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 850, 959

See CRIMINAL PROCEDURE CODE, SS. 345 AND 439 . **I. L. R. 37 All. 419**

——— *Compromise of suit relating to mortgages—Agreement of compromise not registered and not incorporated in decree—Suit for redemption of mortgages—Agreement for extinction of equity of redemption and for division of properties amongst the parties to mortgage deeds—Agreement of compromise given effect and carried out by acts and conduct of parties though document is ineffective to prove contract—Principle that Court will uphold a contract carried into effect by acts and conduct of parties.* In this case the Judicial Committee (affirming the decision of the High Court) *held*, in a suit for the redemption of two mortgages executed in 1848 and 1871 respectively between the predecessors in title of the parties, that the equity of redemption had under the circumstances been extinguished. In 1870 an agreement was come to by the then representatives of the mortgagor and mortgagee in reference to the mortgage of 1848. Sums were fixed as being the principal and the interest due, and arrangements were made for payment by yearly instalments, and for the management of the property. In 1873 differences arose between the parties to that agreement, and the mortgagee brought a suit to enforce it which was compromised, the terms of the agreement being in effect to pay off the mortgage debts and to divide the properties into specific shares which were to be legally conveyed by the mortgagor to the parties respectively entitled to them, and a decree was made by the Court that "the suit be decided in pursuance of the terms of the compromise, and the suit be struck off from the list of cases." No conveyances were executed by the mortgagor in completion of the contract to that effect in the compromise, nor was the agreement of compromise registered nor its terms incorporated into the decree: but it was acted upon and carried out by all the parties to it, and by their successors in title, and for a period of 30 or 40 years prior to the present suit the rights of all the parties had been dealt with upon the same footing as if the mortgagor had made an express conveyance parting with the equity of redemption, and transferring allotted shares of the property itself to the mortgagees, and reserving one share for herself. *Held*, that if the agreement of compromise was defective as not being registered, the decree had been obtained only on one footing, namely that the parties to the suit had in fact arranged their rights in the property in terms of the compromise. And even though the compromise and the decree taken together were considered to be defective or inchoate as elements making up a final and validly concluded agreement for the extinction of the equity of redemption, the acts of the parties had been such as to supply all defects.

COMPROMISE—*concld.*

When the actings and conduct of the parties are founded upon, as in the performance or part-performance of an agreement, the *locus penitentiæ* which exists in a situation where the parties stand upon nothing but an engagement which is not final or complete, is excluded. For equity will support a transaction clothed imperfectly in those legal forms to which finality attaches after the bargain has been acted upon. The principles laid down in *Maddison* v. *Alderson, L. R. 8 A. C. 467*, Bell's Commentaries, 10th Ed., s. 26. and *Potter* v. *Potter, 1 Ves. Sen. 437*, followed. There was nothing in the laws of India inconsistent with these principles; on the contrary those laws followed the same rule. MAHOMED MUSA *v.* AGHORE KUMAR GANGULI (1914)
I. L. R. 42 Calc. 801

COMPUTATION OF TIME.

See LEAVE TO APPEAL TO PRIVY COUNCIL.
I. L. R. 42 Calc. 35

CONDITIONAL CONSENT.

——— **by Collector—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 39 Bom. 580**

CONDITIONAL OFFER.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 959

CONDITIONAL ORDER.

See PUBLIC NUISANCE.
I. L. R. 42 Calc. 702

CONFESSION.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 255 AND 342.
I. L. R. 38 Mad. 302

See EVIDENCE ACT (I OF 1872), S. 30.
I. L. R. 37 All. 247

——— **by co-accused—**

See BAIL . . **I. L. R. 42 Calc. 25**

See JURY TRIALS.
I. L. R. 42 Calc. 789

CONFISCATION.

——— *Cargo—Enemy ship—Cargo shipped by British subjects before declaration of war—War declared whilst cargo at sea—Cargoes consigned to German merchants (in one instance to British merchant)—Destination (Enemy Port)—Contracts C. I. F.—Moneys advanced by British Banks against documents of title—Property in goods at the time of capture.* On August 4th, 1914, war was declared between Great Britain and Germany. Before the declaration of war H. S. N. C. & Co., British subjects, had shipped some bales of jute by a German ship, the S.S. *Rappenfels*, of the Hansa Line, and had consigned the goods to D. C. & Co., British merchants. G. & Co. and G. W. & Co. had also

CONFISCATION—*concld.*

shipped goods by the same ship but had consigned the goods to German merchants. The *Rappenfels* was captured at sea after the declaration of war and condemned as good and lawful prize at Colombo. The *Rappenfels* was sent to Calcutta to have the liability of the cargo to condemnation determined by the High Court at Fort William in Bengal. Messrs. H. S. N. C. & Co., G. & Co. and G. W. & Co. submitted claims for the release of their goods. These claims were disputed by the Crown :—*Held*, (i) that in determining the question of liability of the goods to confiscation, regard must be had to the property in the goods and not to the risk except so far as it may assist the Court in determining the answer to the question—"To whom did the goods belong at the time of capture"? (ii) that the sellers did not pass the property in the goods to the buyers at the time of appropriating the goods to the contract; and (iii) that in the circumstances the property in the goods was in the sellers, and they were not liable to be confiscated. RE CARGO *ex* S.S. "RAPPENFELS" (1914) **I. L. R. 42 Calc. 334**

CONSENT.

See ACQUIESCENCE **I. L. R. 37 All. 412**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 39 Bom. 580**

See CONSENT OF COURT.

See CONSENT OF PARTIES.

See EVIDENCE . **I. L. R. 38 Mad. 160**

——— **of landlord—**

See TRANSFERABILITY. **I. L. R. 42 Calc. 172**

CONSENT OF COURT.

See MAHOMEDAN LAW—MARRIAGE. **I. L. R. 42 Calc. 351**

CONSENT OF PARTIES.

See JURISDICTION. **I. L. R. 42 Calc. 116**

CONSIDERATION.

See PROMISSORY NOTE. **I. L. R. 37 All. 99** **I. L. R. 38 Mad. 680**

CONSOLIDATED RATE.

See RATES AND TAXES. **I. L. R. 42 Calc. 625**

CONSOLIDATING STATUTE.

——— **construction of—**

See EXECUTION . **I. L. R. 38 Mad. 199**

CONSPIRACY.

See CHARGE . **I. L. R. 42 Calc. 957**

See CRIMINAL CONSPIRACY.

See MARRIAGE, CONTRACT OF. **I. L. R. 39 Bom. 682**

——— *Procedure—Criminal conspiracy—Separate trial.* A person may be guilty

CONSPIRACY—*concld.*

of criminal conspiracy even though the illegal act, which he has agreed to do, has not been done, for "the crime of conspiracy consists only in the agreement or confederacy to do an illegal act by legal means or a legal act by illegal means." *Reg.* v. *Hibbert, 13 Cox. 82, Quinn* v. *Leathem, [1901] A. C. 495, The Queen* v. *Most, 7 Q. B. D. 244 : 14 Cox. 583,* and *O'Connell* v. *The Queen, 11 Cl. & F. 155 ; 1 Cox. 413 ; 5 St. Tr. N. S. 1,* referred to. The indictment in all cases of conspiracy must in the first place charge the conspiracy, but in stating the object of the conspiracy the same degree of certainty is not required as in an indictment for the offence conspired to be committed. *The King* v. *Gill, 2 B. & Ald. 204, The Queen* v. *Kenrick, 5 Q. B. 49, The Queen* v. *Blake, 6 Q. B. 126, Sydserff* v. *The Queen, 11 Q. B. 245, The Queen* v. *Gompertz, 9 Q. B. 824 ; 2 Cox. 145, Aspinall* v. *The Queen, 2 Q. B. D. 48, Taylor* v. *The Queen, [1895] 1 Q. B. 25, Reg.* v. *Parker, 3 Q. B. 292,* referred to. If all the *known* co-conspirators named in the charge are not placed on their trial, the trial of some (separately) without the others is not vitiated. *Emperor* v. *Lalit Mohan Chuckerbutty, I. L. R. 38 Calc. 559 ; 15 C. W. N. 593,* explained. AMRITA LAL HAZRA *v.* EMPEROR (1915) . **I. L. R. 42 Calc. 957**

CONSTRUCTION.

See HINDU LAW—WILL. **I. L. R. 42 Calc. 561**

See LIMITATION . **I. L. R. 38 Mad. 101**

——— **of deed of sale executed by Hindu widow——**

See HINDU LAW—ALIENATION. **I. L. R. 37 All. 369**

——— **of deeds executed by natives of India—**

See HINDU LAW . **I. L. R. 37 All. 369**

CONSTRUCTION OF DEED.

——— *Simultaneous execution of sale-deed and agreement to reconvey—Transaction amounts to mortgage by conditional sale.* The land in dispute was sold by the defendants to the plaintiff's father on the 7th November 1892 for Rs. 300. On the same day, the latter agreed with the defendants that if they repaid Rs. 300 in five years, he would re-sell the land to them. From 1895 the defendants were in possession of the land as tenants of the plaintiffs and paid Rs. 18 as rent every year. In 1910, the plaintiffs sued to recover possession of the land. The defendants claimed to redeem the lands alleging that the transaction of 1892 amounted to mortgage. The first Court held that the transaction was a mortgage and allowed redemption; but the lower appellate Court held that it was a sale and decreed plaintiffs' claim. The defendant having appealed :—*Held*, reversing the decree, that in view of the facts and the contemporaneous nature of the two documents the proper construction would be that they constituted conditional sale, and that the real intention of the

CONSTRUCTION OF DEED—*concld.*

parties was to effect a mortgage by conditional sale by the contemporaneous execution of the two documents of sale and re-sale. MADHAVRAO KESHAVRAO *v.* SAHEBRAO GANPATRAO (1914) **I. L. R. 39 Bom. 119**

CONSTRUCTION OF DOCUMENT.

See WILL . . **I. L. R. 37 All. 42**

——— *Mortgage of stock-in-trade of business—Schedule of stock-in-trade forming part of mortgage.* Where the stock-in-trade of a business was mortgaged as security for a loan and a list of the specific articles of which it consisted was attached to the mortgage-deed: *Held*, that the mortgage did not include stock acquired after the date of the mortgage to replace that which had been sold. *Tapfield* v. *Hillman, 6 Man. & Gr. 245*, and *Coltman* v. *Chamberlain, 25 Q. B. D. 328*, referred to. ROBERT WILLIAM ANDERSON *v.* BANK OF UPPER INDIA, LIMITED (1915) . **I. L. R. 37 All. 390**

CONSTRUCTION OF LEASE AND SANAD.

See RESUMPTION. **I. L. R. 39 Bom. 279**

CONSTRUCTION OF STATUTES.

See MUSSALMAN WAKF VALIDATING ACT (VI OF 1913), S. 3. **I. L. R. 39 Bom. 563**

See STATUTES, CONSTRUCTION OF.

CONSTRUCTIVE NOTICE.

See RATES AND TAXES. **I. L. R. 42 Calc. 625**

CONTEMPT OF COURT.

——— *Practice—Appeal—Assisting in contempt—Procedure.* Where the prohibitory injunction on the defendant firm made no mention of *M*, an assistant, or of servants and agents, but the notice of motion for committal for breach thereof was upon *M* who did nothing after service on him of the injunction. *Held*, that the notice of motion was erroneous, and the procedure which had been adopted was misconceived: the proceedings against *M*, if any, should have been for *assisting* in a contempt of Court. *Held*, also, (on the merits) that there had been no contempt or participation in contempt on *M*'s part, as all that he did had been done prior to the injunction. MARSHALL *v.* GRANDHI VENCATA RATNAM (1915) **I. L. R. 42 Calc 1169**

CONTENTIOUS MATTER.

See INSOLVENCY . **I. L. R. 42 Calc. 109**

CONTINUOUS ACCOUNT.

See CHEQUE, PAYMENT BY. **I. L. R. 42 Calc. 1043**

CONTRACT.

See ARBITRATION. **I. L. R. 42 Calc. 1140**

CONTRACT—*contd.*

See COMPROMISE. **I. L. R. 42 Calc. 801**

See CONTRACT ACT (IX OF 1872).

See HINDU LAW—ADOPTION. **I. L. R. 39 Bom. 528**

See UNDUE INFLUENCE. **I. L. R. 42 Calc. 286**

——— **by members of Hindu joint family—**

See HINDU LAW—JOINT FAMILY. **I. L. R. 39 Bom. 715**

——— **incapacity to make—**

See HINDU LAW—MINOR. **I. L. R. 38 Mad. 166**

——— **of pre-emption—**

See PRE-EMPTION. **I. L. R. 38 Mad. 114**

——— **to sell—**

See CONTRACT ACT (IX OF 1872), SS. 39, 55, 64, 65, 73, 74 AND 75. **I. L. R. 38 Mad. 178**

See HINDU LAW—ALIENATION. **I. L. R. 38 Mad. 1187**

——— **to sell goods without authority—**

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 36, 115, 120. **I. L. R. 38 Mad. 275**

1. ——— *Breach of contract—Damages, ascertainment of—Earnest-money, deposit of, forfeiture of—Credit for forfeited amount.* Where a person deposits a certain amount as earnest-money for the due performance by him of his part of the contract under which he agrees to pay the other party a certain sum but breaks the contract thereafter, the other party who becomes entitled to retain the deposit as forfeited under the terms of the contract must, in a suit by him for damages for the breach of contract, give credit for the amount retained as forfeited and can only recover the difference between the actual loss sustained and the amount of the forfeited deposit. *Ockenden* v. *Henly, 1 E. B. & E. 485; s. c. 27 L. J. Q. B. 361*, followed. VELLORE TALUK BOARD *v.* GOPALASWAMI NAIDU (1914) **I. L. R. 38 Mad. 801**

2. ——— *Breach of contract—Attachment of plaintiff's property in consequence—Right of suit without actual damage.* The defendant having agreed with the plaintiff as one of the terms of a compromise of a suit *in forma pauperis*, to pay part of the Court fee, if subsequently levied and having failed to do so in consequence of which the plaintiff's properties were attached, *Held*, that on the defendant's failure to pay the plaintiff according to his contract, the plaintiff was entitled to sue at once and recover substantial damages. RAMALINGATHUDAYAR *v.* UNNAMALAI ACHI (1914) . . . **I. L. R. 38 Mad. 791**

CONTRACT—*contd.*

3. ——————— *Interpretation of.* Contracts should be interpreted by themselves and it is improper to interpret one contract by reference to another because they may seem to differ very ittle, as it may result in identifying contracts which are wholly different. *Gobboy* v. *Avetoom, I. L. R. 17 Calc. 449,* distinguished. *Southwell* v. *Bowditch, L. R. 1 C. P. D. 374,* followed. PATIRAM BANERJEE *v.* KANKINARRA CO., LD. (1915) . . . . **19 C. W. N. 623**

4. ——————— *Privity of contract—Right of third parties to sue on covenant in lease.* Where on a lease of certain muafi land the lessees undertook, as between themselves and their lessor, to be responsible for the payment to the zamindars of certain sums which the muafidar was primarily bound to pay: *Held,* that the zamindars could not enforce this covenant by suit against the lessees. *Khwaja Muhammad Khan* v. *Husaini Begam, I. L. R. 32 All. 410, Touche* v. *The Metropolitan Railway Warehousing Company, L. R. 6 Ch. App. 671,* and *Debnarayan Dutt* v. *Chunilal Ghose, I. L. R. 41 Calc. 137,* distinguished. MANGAL SEN *v.* MUHAMMAD HUSAIN (1914) **I. L. R. 37 All. 115**

5. ——————— *Specific performance of contract, suit for—Contract alleged not proved, but another found by Court—Decree for specific performance or damage, if lies.* The principle upon which the Court refuses specific performance of a contract, not the subject-matter of the suit, is equally applicable to the claim for damages for breach of that contract. The principle on which damages are decreed in a suit for specific performance considered. NILKANTA RAI CHAUDHURI *v.* LALIT MOHAN BANERJEE (1915) **19 C. W. N. 933**

6. ——————— *Stranger's right of suit on—Family settlement—Trust—Provision for nuptials of plaintiff, a daughter of the family—Her right of suit though not a party to the contract.* A person though not a party to a contract can sue to enforce the terms thereof if it be a family settlement by which some provision is made for him or her as a member of the family (*e.g.*) for maintenance or marriage, though the same is not made a charge upon the family properties. *Iswaram Pillai* v. *Taregan, 26 Mad. L. J. 127,* distinguished. If the contract constitutes by its terms a trust in favour of the plaintiff, a stranger to the contract, a suit to enforce such trust is beyond the cognisance of a Court of Small Causes. SUNDARARAJA AIYANGAR *v.* LAKSHMIAMMAL (1914) **I. L. R. 38 Mad. 788**

7. ——————— *Stranger to the contract—No right of suit, on the contract, generally.* *A* mortgaged his lands to *B,* part of the consideration therefor, being *B*'s promise to discharge a debt of *A* to *C*. *Held,* that *C* who was a stranger to the contract cannot sue *B* for the payment of his debt without joining *A* as a party. *Per curiam.* The following are some of the circumstances under which a stranger to a contract can sue the promisor :—(*a*) the creation of a trust in favour of the

CONTRACT—*concld.*

plaintiff in respect of the amount sued for; (but a direction to pay, as in the present case, does not of itself create an express or constructive trust, owing to the absence of the elements necessary to constitute a trust); (*b*) the creation of a charge on immoveable property by the promisor or allocation by the promisor of the specific money in suit in favour of the plaintiff; (*c*) the creation of a settlement on marriage, in which the plaintiff may be beneficially entitled, as provided by s. 23 of the Specific Relief Act: and (*d*) estoppel as against the promisor, owing to transactions between the plaintiff and the promisor. *Khwaja Muhammad Khan* v. *Husaini Begam, I. L. R. 32 All. 410,* and *Debnarain* v. *Ramasadhan, 17 C. W. N. 1143,* distinguished. ISWARAM PILLAI *v.* SONNIVAVERU TARAGAN (1913) . **I. L. R. 38 Mad. 753**

CONTRACT ACT (IX OF 1872).

——— **s. 16, cl.** (*2*)—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 850

——— **ss. 16, 19**—

See UNDUE INFLUENCE.
I. L. R. 42 Calc. 286

——— **ss. 16, 74 illus.** (*f*)—

See INTEREST.
I. L. R. 42 Calc. 652, 690

——— **s. 23**—

See BILL OF LADING.
I. L. R. 38 Mad. 941

See HINDU LAW—MARRIAGE.
I. L. R. 39 Bom. 538

——— **ss. 23, 65**—*Agreement for consideration to procure appointment to a public office—Failure to fulfil promise—Suit to recover amount paid, if lies—Pari delicto, parties—Refund.* Any contract to appoint one to a public office or involving the sale of a public office or securing an office for the promisor or recommending him for such office is opposed to public policy. Such contracts are void without reference to the question whether improper means are contemplated or used in their execution. *Pichakutty* v. *Narayannappa, 2 Mad. H. C. R. 243,* distinguished and doubted. Where the contract alleged was that the defendant, a Nazir of a District Judge's Court, was, in consideration of plaintiff paying him Rs. 150, to provide the latter's son with the post of a permanent peon within two years, and the suit was to recover Rs. 100 alleged to have been paid by plaintiff as aforesaid on the ground that the defendant had failed to perform his promise within the time stipulated: *Held,* that the parties in this case being clearly in *pari delicto,* the Court would not assist the plaintiff to recover the money. Although where money has been paid under an unlawful agreement but nothing else done in performance of it, the money may be recovered back, this exception will not be allowed if the agreement is actually criminal or immoral. S. 65 of

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 23**—*concld.*

the Contract Act aptly applies only in cases of agreements which are subsequently found to be void on account of some latent defect or of circumstances unknown at the date of the agreement or of an agreement which is afterwards made void by circumstances which supervene. LEDU COACHMAN *v.* HIRALAL BOSE (1915) . **19 C. W. N. 919**

——— **s. 26**—*Kabinnamah—Authority given by Mahomedan husband to wife to divorce on husband marrying a second wife, if valid.* A provision in a *kabinnamah* by which a Mahomedan husband authorises his wife to divorce herself from him in the event of his marrying a second wife is not void under s. 26 of the Contract Act. It is lawful for a Mahomedan husband to delegate to his wife power to divorce on certain conditions and the husband marrying a second wife is such a condition. *Badarannissa* v. *Mafiatala, 7 B. L. R. 442,* and *Ayatunnessa* v. *Karam Ali, 12 C. W. N. 907,* referred to. MAHARAM ALI *v* AYESA KHATUM (1915) . . . . **19 C. W. N. 1226**

——— **s. 27**—*Agreement in restraint of trade —Mutual agreement between two neighbouring landowners not to hold cattle markets on the same day. Held,* that an agreement entered into by an owner of land with the owner of adjoining land, to the effect that a market for the sale of cattle should not be held on the same day on the lands of both of them, is not an agreement to which the principle of s. 27 of the Indian Contract Act, 1872, applies. POTHI RAM *v.* ISLAM FATIMA (1915)
I. L. R. 37 All. 212

——— **s. 37**—

See DAMDUPAT, RULE OF.
I. L. R. 42 Calc. 826

——— **ss. 38, 54**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 959

——— **ss. 39, 55, 64, 65, 73, 74 and 75**—*Vendor and Purchaser—Right to recover deposit 'forfeited' by terms of a contract to sell. A* entered into a contract on 24th February 1903 with *B* for the purchase of lands belonging to the latter for Rs. 41,000. Of this amount Rs. 4,000 was paid in advance, Rs. 20,000 was agreed to be paid by means of a mortgage and the balance before the 24th May 1903, when the conveyance was to be executed. The contract provided that the Rs 4,000 was to be forfeited if there was any delay on the part of the purchaser. It was also stipulated that the vendor was to execute the conveyance either in favour of the purchaser or those nominated by him. In part performance of this contract a sale of a portion of the lands was effected in favour of *M* on the 28th March 1903. Just before the day for payment, *B* gave notice to *A* that if the sale was not completed on or before the agreed date, the contract would be avoided *A* failed to perform the contract before that date Subsequently *B* sold the lands to third

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 39**—*concld.*

parties and realised Rs. 1,500 in excess of the price stipulated by *A*. *A* brought a suit for the specific performance of the contract, or, in the alternative to recover the Rs. 4,000 paid by him. The Subordinate Judge disallowed the claim for specific performance but decreed the return of the deposit of Rs. 4,000 to *A*. *B* appealed. *Held,* by the Court (SADASIVA AYYAR, J., dissenting) that *A*, the plaintiff, was not entitled to a return of the deposit. Neither s. 64 nor s. 74 of the Indian Contract Act (IX of 1872) is applicable to such a deposit, and a stipulation for its forfeiture in case of breach is not one by way of penalty. The law of India on this subject does not differ from the English law. A stipulation to forfeit 10 per cent. of the consideration in case of breach is neither unreasonable nor extraordinary. A vendor can be given relief by way of rescission of contract and at the same time, in the absence of express stipulation to the contrary, may be allowed to retain the deposit. *Howee* v. *Smith, L. R. 27 Ch. D. 89,* applied. *Per* WHITE, *C.J.*—(i) The last rule would apply *a fortiori*, when, as in this case, there is an express agreement to forfeit the deposit. (ii) Since the Judicature Acts, the question whether time is of the essence of the contract, must be governed by rules of equity, and purchaser is entitled in such cases, as here, to fulfil his contract within a reasonable time after the agreed date. *Per* MILLER, *J.*—(*i*) Time was of the essence of the contract in this case. (*ii*) The agreement to forfeit is not wanting in consideration as the deposit is not made as part payment but as security for the purpose of binding the bargain. *Per* SADASIVA AYYAR, *J.*—*A* was entitled to recover the deposit under the Indian Contract Act which is exhaustive as regards the law of Vendor and Purchaser and the English law is not applicable. A stipulation to forfeit a deposit is a stipulation to pay a penalty. Time was of the essence of the contract in this case. NATESA AIYAR *v.* APPAVU PADAYACHI (1913)
I. L. R. 38 Mad. 178

——— **ss. 59, 61**—*Appropriation of payments.* An appropriation of payment must be made by the debtor at the time of paying and by the creditor at the time of receiving the money. If neither of them makes the appropriation the law appropriates the payment to the earliest debt. Ss. 59 to 61 of the Indian Contract Act enacted the rule of the Civil Law as laid down in *Clayton's Case, 1 Mer. 572, 604,* with certain modification. KUNDAN LAL *v* JAGANNATH (1913)
I. L. R. 37 All. 649

——— **ss. 64, 66**—

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 91 . **I. L. R. 38 Mad. 321**

——— **s. 65**—

See BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862), S. 3.
I. L. R. 39 Bom. 358

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 70**—*Applicability of, regardless of English decisions.* Plaintiff's father made a gift of a village to the defendant, the condition being "we (the plaintiff's father) should get the village sub-divided in your (donee's) name; you should pay to the Government the peshkash fixed thereupon according to the said sub-division." *Held*, that the defendant was bound to pay his portion of the peshkash only from the time of the sub-division when alone the exact amount due by the defendant was ascertained; and that plaintiff who had paid the whole peshkash was entitled to recover from the defendant under s. 70 of the Indian Contract Act whatever the defendant was liable to pay after the sub-division. S. 70 of the Indian Contract Act should be applied in all cases where the requirements of the section are fulfilled, whatever might be the English Law on the subject. A person must be said to have enjoyed the benefit of an act within the meaning of s. 70 of the Indian Contract Act, when he in fact enjoyed the benefit by accepting or adopting it, without objecting to it. S. 70 does not require that the defendant must have an option of declining the benefit if that means that before the benefit is conferred he must be given the choice of accepting or declining it. *Per* MILLER, *J.*—The fact that plaintiff's interest also might have suffered if the act was not done will not make the act any the less one done for the defendant. *Narayanaswami Naidu* v. *Sri Rajah Vellanki Sreenivasa Jagannatha Rao, I. L. R. 33 Mad. 189*, and *Yogambal Boyee Ammani Ammal* v. *Naina Pillai Markayar, I. L. R. 33 Mad. 15*, referred to. *Per* SADASIVA AYYAR, *J. Obiter*: If the benefit conferred is inseparably accompanied by onerous obligations that a reasonable man would refuse to accept, s. 70 will not apply. *Damodara Mudaliar* v. *Secretary of State for India, I. L. R. 18 Mad. 88*, and *Jognarain* v. *Badri Das, 16 C. L. J. 156*, followed. *Yogambal Boyee Ammani Ammal* v. *Naina Pillai Markayar, I. L. R. 33 Mad. 15*, dissented from. *Abdul Wahid Khan* v. *Shaluka Bibi, I. L. R. 21 Calc. 496*, and *Ram Tuhul Singh* v. *Bisseswar Lall Sahoo, 2 I. A. 131*, distinguished. *Rajah of Vizianagaram* v. *Rajah Setucherlaraz Somasakara, I. L. R. 26 Mad. 686*, referred to. SRI SRI SRI CHANDRA DEO *v.* SRINIVASA CHARLU (1913) . . . **I. L. R. 38 Mad. 235**

——— **s. 72**—

See INCOME TAX.

I. L. R. 42 Calc. 151

——— Money paid under compulsion of legal proceedings cannot be recovered. *Marriot* v. *Hampton, 7 T. R. 269*, followed. BISWANATH GORAIN *v.* SURENDRA MOHAN GHOSE (1913) . . **19 C. W. N. 102**

——— **s. 73**—*Lessee of zamindari property undertaking to pay Government revenue payable by lessor—Default—Sale for arrears of revenue—Measure of damages.* Where a lessee of zamindari property undertook to deposit the Government revenue payable by the lessor and the property was sold for arrears of revenue upon the lessee's failure to do so, and it appeared that the lessor was not only not aware of the lessee's default but that the lessee deliberately allowed the estate to be sold and never intimated the danger to the lessor: *Held*, that there was no room for the application of the doctrine that a plaintiff is not entitled to damages for breach of contract when by use of reasonable precautions he might have avoided loss. In the lease which covered only a portion of the zamindari there was a clause that a separate account of the portion leased was to be opened at the lessee's instance and the loss on account of sale for arrears of revenue was to be assessed at Rs. 500. But no separate account was opened, and on default of payment of revenue by the lessee, the whole estate was sold. *Held*, that the measure of the loss sustained by the lessor was the market value of the estate sold. ROHIM BUKSH MANDAL *v.* SHAJAD AHMAD CHAUDHURY (1914)

19 C. W. N. 1311

CONTRACT ACT (IX OF 1872)—*contd.*

——— **s. 73**—*concld.*

——— **ss. 108, 178**—

See LIMITATION ACT (IX OF 1872).

I. L. R. 38 Mad. 783

——— **ss. 134, 137**—*Suit against principal and surety—Removal of principal's name as summons could not be served on him—Suit can proceed against surety alone if suit against principal be still in time—Civil Procedure Code (Act V of 1908), Order IX, Rule 5, Order XXIII, Rule 1.* A suit was brought in 1913 on a promissory note passed in 1912 by defendant No.1 as principal and defendant No. 2 as surety. No summons could be served on defendant No. 1: his name was therefore struck out and the suit proceeded against defendant No. 2 alone. The lower Court dismissed the suit on the ground that as the principal was discharged by an act of the creditor (plaintiff) in having his (defendant No. 1's) name struck out, the surety also was thereby discharged. On plaintiff's application under extraordinary jurisdiction, *Held*, reversing the decree and remanding the suit, that the mere omission of the plaintiff to pursue his suit against one of the defendants with the result that that defendant's name was struck off and the suit dismissed against him under Order IX, Rule 5, of the Civil Procedure Code (Act V of 1908) did not discharge the surety, provided the suit was still in time against the principal. NATHABHAI TRICAMLAL *v.* RANCHHODLAL RAMJI (1914)

I. L. R. 39 Bom. 52

——— **ss. 151, 152**—

See RAILWAY . **I. L. R. 39 Bom. 191**

——— **ss. 196 to 200**—

See MADRAS IRRIGATION CESS ACT (VII OF 1865), s. 1 . **I. L. R. 38 Mad. 997**

——— **s. 230** (*2*)—

See SALE OF GOODS.

I. L. R. 42 Calc. 1050

CONTRACT ACT (IX OF 1872)—*concld.*

——— **s. 235**—

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 36, 115 AND 120.
I. L. R. 38 Mad. 275

——— **ss. 239, illus. (*a*), 249, 251, 252**—

See PARTNERSHIP.
I. L. R. 39 Bom. 261

CONTRACT OF EMPLOYMENT.

See BROKER . **I. L. R. 42 Calc. 1050**

CONTRACT OF MARRIAGE.

See MARRIAGE, CONTRACT OF.
I. L. R. 39 Bom. 682

——— **breach of**—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 35 (*g*).
I. L. R. 38 Mad. 274

CONTRACT OF SALE.

See EVIDENCE ACT (I OF 1872), S. 92.
I. L. R. 38 Mad. 514

CONTRACTS C. I. F.

See CONFISCATION.
I. L. R. 42 Calc. 334

CONTRIBUTION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 82 . **I. L. R. 37 All. 101**

CONTRIBUTORIES.

See COMPANY . **I. L. R. 39 Bom. 331**

CONVERSION.

——— **outside British India**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 179 TO 188.
I. L. R. 38 Mad. 779

CONVEYANCE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, R. 2.
I. L. R. 38 Mad. 698

——— **by executor**—

See VENDOR AND PURCHASER.
I. L. R. 42 Calc. 56

——— **of family lands**—

See HINDU LAW—ALIENATION.
I. L. R. 38 Mad. 1187

CONVICTION.

See EVIDENCE . **I. L. R. 42 Calc. 784**

CORPORATION-SOLE.

See MUTT, HEAD OF.
I. L. R. 38 Mad. 356

CORROBORATION.

See CONFESSIONS OF CO-ACCUSED.
I. L. R. 42 Calc. 789

COSTS.

See PAKKI ADAT TRANSACTIONS.
I. L. R. 39 Bom. 1

1. ——— *Partition—Civil Procedure Code (Act V of 1908) s. 107, O. XLI, r. 4, application of—Appellate Court, power of.* It is not necessary for the application of O. XLI, r. 4, of the Code of Civil Procedure that the decree should proceed on every ground common to all the plaintiffs or defendants. It is quite sufficient if it proceeds on any ground common to the party to which the appellant belongs. Under s. 107 of the Code, the Appellate Court has the same power as the Court of first instance. *Shama Soonduree Debia* v. *Jardine Skinner & Co., 12 W. R. 160, Dildar Ali Khan* v. *Bhawani Sahai Singh, I. L. R. 34 Calc. 878,* and *Ram Kamal Saha* v. *Ahmad Ali, I. L. R. 30 Calc. 429,* referred to. AMBIKA PRASAD SINGH *v.* PERDIP SINGH (1914)
I. L. R. 42 Calc. 451

2. ——— *Taxation—Application by a person for being registered as a shareholder in a Company—Indian Companies Act (VI of 1882), s. 254—High Court Rules, Rule 704—High Court Manual of Circular, Chapter VIII.* To regulate costs incurred in obtaining an order from the District Court to register the applicant as a shareholder of a Company, recourse must be had to the High Court Manual of Civil Circulars, 1912, Chapter VIII, and not to High Court Rules (Original Side), Rule 704 framed under s. 254 of the Indian Companies Act (VI of 1882). DAMODAR MOHOLAL GINNING AND MANUFACTURING COMPANY LD. *v.* NAGINDAS MAGANLAL (1915)
I. L. R. 39 Bom. 383

3. ——— *Appeal—Security for costs.* The fact that the appellant has no money of her own is not in itself a sufficient ground for demanding security for costs. When it appeared that the appeal was not merely vexatious (the appellant's suit having been decreed by one Court), the fact that the appellant had relations who had money to pay was not a sufficient ground for demanding security. MATHURA NATH SINGH *v.* PRIYASHASHI DEBI (1914)
19 C. W. N. 446

4. ——— *Discretion as to Costs—Accounts, suit for, against manager—Costs against manager for default or dishonest conduct in accounting—S. 22, Presidency Small Cause Courts Act (XV of 1882).* A person who takes up the management of another's estate and collects and disburses moneys has to be ready with his account. His failure to perform the obvious duty necessitates a suit and he must pay the plaintiff's cost. *Collyer* v. *Dudley, 2 L. J. Ch. 15,* followed. This is all the more so when he makes a dishonest defence, submits a false account and keeps back books of account or documents. *Hurrinath* v. *Krishna Kumar, I. L. R. 14 Calc. 147, 159,* referred to. Where the manager sued the principal for arrears of salary in the Presidency Court of Small Causes and the principal sued the manager in the High Court for accounts and the two suits were heard

COSTS—*concld.*

together in the High Court and an amount less than Rs. 1,000 was found due from the manager to the principal, costs were awarded against the manager on High Court scale No. II having regard to the circumstances above stated. SUKUMARI GHOSH *v.* GOPI MOHAN GOSWAMI (1915)
19 C. W. N. 880

5. ——— *when part only of claim allowed.* The Subordinate Judge having decreed the plaintiffs' claim for less than half the amount should have allowed the plaintiffs' costs to the extent of their success. KHAGARAM DAS *v.* RAM SANKAR DAS PRAMANIK (1914)
19 C. W. N. 775

COURT.

——— **duty of—**

See INTEREST . **I. L. R. 42 Calc. 690**

——— **not closed, if the officer on tour—**

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192 . **I. L. R. 38 Mad. 295**

COURT FEE.

See AD VALOREM COURT-FEE.
See DECLARATION, ETC.
I. L. R. 38 Mad. 922

See SUCCESSION ACT (X OF 1865), s. 187.
I. L. R. 38 Mad. 988

——— *Plaint—Valuation of Suit—Court Fees Act (VII of 1870), s. 7, sub-s. (4), cl. (c).* In a suit for a declaration that a decree for over Rs. 22,000 was bad and might be set aside, the plaintiffs, who were interested only in three-annas share of the property which was valued at Rs. 9,000 were required to pay court-fee for the whole of the decretal amount:—*Held*, that the plaintiffs must value their suit according to the extent of their claim and the court-fee need therefore be paid only upon the amount. *Phul Kumari* v. *Ghanshyam Misra, I. L. R. 35 Calc. 202*, and *Harihar Prasad Singh* v. *Shyam Lal Singh, I. L. R. 40 Calc. 615*, referred to. GANESH BHAGAT *v.* SARADA PRASAD MUKERJEE (1914)
I. L. R. 42 Calc. 370

COURT FEES ACT (VII OF 1870).

——— **s. 7, sub-s. (4), cl. (c)—**

See COURT-FEE.
I. L. R. 42 Calc. 370

See DECLARATION, ETC.
I. L. R. 38 Mad. 922

——— **s. 7, cls. (iv) (c) and (v)**—*Suit for declaration of the invalidity of a decree as against the plaintiff or his properties and for possession of some of those properties sold under the decree—Relief for possession only consequential on grant of declaration—No liability to value the declaration as on the amount of the decree—Plaintiff's right to give a combined valuation for both reliefs.* In a suit for (i) a declaration that a certain decree was of no legal effect against the plaintiffs or the properties in their hands and (ii) possession of part of those

COURT FEES ACT (VII OF 1870)—*concld.*

——— **s. 7**—*concld.*

properties, which had been sold in execution of the decree, *Held*, (*a*) that the two reliefs were connected and were to be taken together, the relief for possession being consequential on the grant of declaration, (*b*) that the plaintiff was entitled to put in respect of both the reliefs a combined valuation for the purpose of court-fees, (iii) that the whole suit was not governed by s. 7, cl. 4 (*c*) of the Court Fees Act (VII of 1870), as there was a prayer for possession also which was to be valued as per s. 7, cl. 5, notwithstanding that the declaration was asked for, and (iv) that the prayer for declaration was not liable to be valued for purposes of court-fees as upon the amount of the decree sought to be set aside as invalid. RAJAGOPALA *v.* VIJAYARAGHAVALU (1914)
I. L. R. 38 Mad. 1184

——— **s. 7, cl. IV (*f*) and s. 11**—*Suit for accounts and administration—Valuation of the suit for purposes of court-fees.* In a suit for accounts and administration of the estate by the Court, the claim was valued at Rs. 130 for purposes of court fees and at Rs. 30,00,000 for purposes of jurisdiction and pleader's fees. It was contended on behalf of the defendants that the suit had not been properly valued for purposes of court fees inasmuch as the suit was not an administration suit but was in effect a claim by the plaintiff for her share in the estate. This contention found favour with the lower Courts which held that the suit was not for administration and the stamp duty was payable on the value of paintiff's share in the property which amounted to Rs. 67,968-12-0. On appeal to the High Court: *Held*, that having regard to the statements in the plaint, an administration suit was maintainable and that it could be treated as a suit for account. The plaintiff would, therefore, be at liberty to value it at Rs. 130 or any other sum under s. 7, cl. IV (*f*) of the Court Fees Act. In the event of a decree being passed for a larger amount than that covered by the fees already paid, the plaintiff would be precluded by the provisions of s. 11 of the said Act from executing such decree until fees liable on the whole amount of the decree had been paid. KHATIJA *v.* SHEKH ADAM HUSENALLY (1915)
I. L. R. 39 Bom. 545

——— **s. 7, cl. (xi) (cc)—**

See JURISDICTION.
I. L. R. 38 Mad. 795

COURT OF WARDS.

See U. P. COURT OF WARDS ACT (III OF 1899), SS. 16 AND 20.
I. L. R. 37 All. 585

COURT-SALE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 53 . **I. L. R. 39 Bom. 507**

CREDIT.

See CONTRACT, BREACH OF.
I. L. R. 38 Mad. 801

CREDIT—*concld.*

——— **evidence as to—**

See APPELLATE COURT.
I. L. R. 39 Bom. 386

CREDITOR.

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 31 . **I. L. R. 37 All. 383**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 34 . **I. L. R. 37 All. 452**

——— **acceptance by—**

See LIMITATION . **I. L. R. 38 Mad. 374**

——— **fraud of—**

See MORTGAGE BY MINOR.
I. L. R. 38 Mad. 1071

——— **petition by—**

See COMPANY . **I. L. R. 39 Bom. 47**

——— **priority of—**

See ADMINISTRATOR-GENERAL'S ACT (II OF 1874), SS. 28, 34 AND 35.
I. L. R. 38 Mad. 500

——— **right of, in insolvency—**
I. L. R. 37 All. 252

CRIMINAL BREACH OF TRUST.

See PENAL CODE (ACT XLV OF 1860), S. 405 . . **I. L. R. 38 Mad. 639**

CRIMINAL CASE.

See APPEAL . **I. L. R. 42 Calc. 374**

CRIMINAL CASES.

——— **appeal in—**

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 42 Calc. 739

CRIMINAL CONSPIRACY.

See CHARGE. **I. L. R. 42 Calc. 957**

——— **proof of—**

See MISJOINDER OF CHARGES.
I. L. R. 42 Calc. 1153

CRIMINAL PROCEDURE CODE (ACT V OF 1898).

——— **s. 15**—*Bench of Magistrates—Judgment and conviction by only some, legality of.* The hearing of a case of assault was commented by six members of a Bench of Magistrates whose legal *quorum* was only two. On adjourned hearings of the case, sometimes four and sometimes only two took part. These two who took part in the proceedings of the case throughout, concluded the trial and delivered judgment convicting the accused: *Held*, that the conviction was legal. *Kuruppana Nadan* v. *Chairman, Madura Municipality, I. L. R. 21 Mad. 246*, followed. There is no analogy between trial by a Bench of Magistrates and trials by arbitrators or jurors. VENKATARAMA *v.* SAMINATHA (1914) . . **I. L. R. 38 Mad. 797**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 75 (*1*)—**

See WARRANT, VALIDITY OF.
I. L. R. 42 Calc. 708

——— **ss. 90, 501 and 537**—*Arrest under s. 90—Bond for appearance—S. 501, applicability of.* A warrant purporting to be issued under s. 90 of the Criminal Procedure Code (Act V of 1898) for the arrest of an accused person who has been let out on his own bond is illegal unless the Court records its reasons as required by the section. The omission to do so is an irregularity not cured by s. 537 of the Code. S. 501 of the Code applies only to cases where there are sureties and where through mistake, fraud or otherwise insufficient sureties have been accepted; it does not apply to a case where there are no such grounds. *Re* KARUTHAN AMBALAM (1914)
I. L. R. 38 Mad. 1088

——— **ss. 106, and 32**—*Security to keep the peace—Powers of Sub-divisional Magistrate.* A Sub-divisional Magistrate is, as such, competent to pass an order under s. 106 of the Code of Criminal Procedure binding over a person to keep the peace for period exceeding six months, notwithstanding that, but for his being a Sub-divisional Magistrate, he would have only second class powers. EMPEROR *v.* RAJA SINGH (1915)
I. L. R. 37 All. 230

——— **s. 107**—*Security to keep the peace—Evidence—Nature of findings required to justify a Magistrate in passing an order under s. 107.* In proceedings under s. 107 of the Code of Criminal Procedure it is not enough for the Magistrate to find that unless the persons before him are bound over to keep the peace, there is likely to be a breach of the peace or disturbance of the public tranquillity. He has to find in respect of each and all of such persons that they are likely to commit a breach of the peace or disturb the public tranquillity, or that they are likely to do some wrongful act which may occasion such a disturbance. *Queen Empress* v. *Abdul Qadir, I. L. R. 9 All. 452*, and *Jagat Narain* v. *Emperor, 7 All. L. J. 161*, referred to. EMPEROR *v.* BRIJNANDAN PRASAD (1914)
I. L. R. 37 All. 33

——— **ss. 107 and 117**—*Security to keep the peace—Evidence—Record of previous trial—Inquiry.* It is not competent to a Magistrate in proceedings under s. 107 *et seq.* of the Code of Criminal Procedure to dispense with the inquiry provided for by s. 117 of the Code and to base his order merely on the results of a riot case recently tried by him. EMPEROR *v.* MUL CHAND (1914)
I. L. R. 37 All. 30

——— **ss. 109 and 110**—*Binding over under both sections illegal.* A person cannot be bound over under both the ss. 109 and 110, Criminal Procedure Code (Act V of 1898). *Re* RANGASAMI PILLAI (1913) . . **I. L. R. 38 Mad. 555**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 110**—

1. ——— *Security for good behaviour—Fresh proceedings after expiration of an order under section if can be based on materials antecedent to the expiration of the previous order.* When after the expiration of the period of a bond for good behaviour taken under s. 110, Criminal Procedure Code fresh proceedings are taken against the accused, such proceedings must be confined to facts and circumstances alleged against him after release from his last security. RAM DEO PANDE *v.* THE EMPEROR (1912)
19 C. W. N. 223

2. ——— *Jurisdiction of Magistrate—"Within the local limits," meaning of.* The words "within the local limits of his jurisdiction" are not equivalent to "residing within the local limits." It is sufficient to give the Magistrate jurisdiction, if the evil habits of the accused were practised and evil reputation acquired within the local limits of his jurisdiction. KING-EMPEROR *v.* DURGA HALWAI (1915) . **19 C. W. N. 1022**

ss. 110, 526— *Security for good behaviour—Transfer—Jurisdiction—Powers of District Magistrate.* When proceedings under s. 110 of the Code of Criminal Procedure initiated before a Magistrate of the first class were transferred by the High Court to the District Magistrate with instructions to transfer them to some other Magistrate subordinate to him, competent to try them, it was *held* that the District Magistrate had no power to transfer such proceedings to a Magistrate of the second class. *King Emperor* v. *Munna, I. L. R. 24 All. 151*, distinguished. EMPEROR *v.* GOVIND SAHAI (1914) . . **I. L. R. 37 All. 20**

——— **ss. 188, 122**—

See SURETY. . **I. L. R. 42 Calc. 706**

——— **s. 133**— *Jury—Applicant consulted by Magistrate as to appointment of jury.* In proceedings instituted under s. 133 of the Code of Criminal Procedure at the instance of *H* against *F*, *F* applied for the appointment of a jury, which was granted. He nominated two jurors. The Magistrate called upon *H*, to nominate two jurors. *H* nominated two jurors, and the Magistrate appointed a foreman. The jury by a majority made an order against *F*. *Held*, that it is not illegal on the part of a Magistrate to address any inquiry to the applicant with a view to ascertaining the names of respectable and independent residents of the neighbourhood, who would be willing to serve on the jury: but the Magistrate should see that he does not appoint friends or partisans of the applicant. The criterion in such cases is whether the person at whose instance the proceedings were instituted was allowed to exercise rights not conferred upon him by law as if he were a party to the litigation. *Upendra Nath Bhuttacharjee* v. *Khitish Chandra Bhuttacharjee, I. L. R. 23 Calc. 499, Kailash Chandra Sen* v. *Ram Lall Mittra, I. L. R. 26 Calc. 869*, and *Mir Imam Abdul Aziz* v. *Queen Empress, Punj. Rec., 1897, Cr. J. No. 4*, referred to. FARZAND ALI *v.* HAKIM ALI (1914)
I. L. R. 37 All. 26

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 133**—*concld.*

——— **ss. 133, 137**—

See PUBLIC NUISANCE.
I. L. R. 42 Calc. 158, 702

——— **s. 144**—

1. ——— *Renewed orders under—Jurisdiction of Magistrate—High Court's power of interference under Charter Act (24 & 25 Vict., c. 104) Art. 15.* Where a renewed order passed under s. 144, Criminal Procedure Code, did not state that there was again a temporary emergency and a continuing or existing insufficiency of the police force to protect the petitioners in their rights. *Held*, that the Magistrate gave himself a more extended jurisdiction than is covered by s. 144 and the order was revisable by the High Court under art. 15, Charter Act, 24 & 25 Vict., c. 104. Their Lordships declined to set aside the order as the two months during which the order would remain in force was almost expiring on the date of hearing. GOVINDA CHETTI *v.* PERUMAL CHETTI (1913)
I. L. R. 38 Mad. 489

2. ——— *Scope of section—Hât, order restraining the holding of—Doing of a lawful act on one's own property if can be restrained under the section.* Where the only ground mentioned for the issue of an order under s. 144, Criminal Procedure Code, restraining the holding of a rival *hât* was that the Magistrate was satisfied from the report of the police that by opening a new *hât* at only half a mile from the old and long established *hât*, the petitioners were about to disturb the public tranquillity. *Held*, that an injunction cannot be issued not to do a lawful act upon a man's own property, and the order in the form in which it was issued was without jurisdiction. That the holding of a *hât* on a man's own property is not in itself a wrongful act, and therefore any ulterior consequence which may arise from it cannot give rise to any proceeding against the owner of the land for committing an act likely to cause a breach of the peace, unless those ulterior consequences are made the basis of the proceedings. The law as regards preservation of public peace is based upon an apprehension that either certain person or persons are likely to commit breach of the peace by their own acts or that they are likely to do wrongful acts which may occasion other people to commit breach of the peace. RAKHAL DAS SINHA *v.* THE KING-EMPEROR (1912)
19 C. W. N. 248

——— **s. 145**—

See LIMITATION ACT (IX OF 1908), s. 28, ART. 47. **I. L. R. 38 Mad. 432**

1. ——— *Omission of Magistrate to give effect to presumption arising from*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 145**—*concld.*

recently published record-of-rights, if a question of jurisdiction. The omission of the Magistrate in making an order under s. 145, Criminal Procedure Code, to give effect to the presumption arising from the entries in a recently published record-of-rights is not a question going to the jurisdiction of the Magistrate, and the High Court cannot interfere on that ground. CHINTAMONI JINA *v.* JAGANNATH RAMANUJA DAS (1914) . . **19 C. W. N. 123**

2. ——— *Rent, collection of dispute regarding, between lakherajdar and putnidar—Decision in the absence of tenants—Produce rent, applicability of section to.* The disputed land in respect of which proceedings under s. 145, Criminal Procedure Code, were instituted consisted of several plots all held by tenants on a yearly rent of half the produce. The parties to the proceedings were the *lakherajdar* and the *putnidar*, the dispute between whom was as to the right to collect rent. It appeared that as regards some of the plots there was a dispute as to what tenants were in possession. *Held*, that as regards the plots about which there was a dispute as to the tenants in possession, the Magistrate should not have made any order in the absence of tenants who might be very seriously prejudiced by an order in favour of one or other of the parties to the proceedings. *Held* (as to the argument that s. 145, Criminal Procedure Code, could not refer to a half-share of the produce), that it was true that if it was a question of dividing a hitherto-undivided share the section might not apply, but in the present case the section applied, as it was a question of rent and it so happened that the rent was half the share of the produce; but there was no question of shares as between the two parties to the proceeding. HARI DAS SAMANTA *v.* ABDUL MOTLEB MULLICK (1915) . . . **19 C. W. N. 959**

——— **ss. 145, 356(*1*), (*3*)—**

See DISPUTE CONCERNING LAND.
I. L. R. 42 Calc. 381

——— **ss. 145 and 522**—*Possession—Ouster—Jurisdiction of Magistrate in exercise of powers under s. 145 to dispossess one person and put another in possession.* Under s. 145 of the Code of Criminal Procedure a Magistrate of the first class has no power to oust one person and to place another in possession of a disputed property. Therefore the order of the District Magistrate in his capacity as the head of the police, declining to carry out such an order is not open to revision by the High Court. The only provision in the Code of Criminal Procedure which entitles a Magistrate to dispossess a person of property and replace him by another who is entitled, is s. 522 of the Code, and for the purpose of exercising the powers therein granted, it is necessary that there should have been a conviction for an offence. TULSI RAM *v.* ABRAR HUSAIN (1915) . . **I. L. R. 37 All. 654**

——— **s. 161**—*Statement recorded by the police, consideration of, by Court—Criminal trial—Duty of Judge to record independent finding as to truth or otherwise of evidence.* Where the Sessions Judge in his judgment gave no finding as to the truth or falsity of each witness's statement, but relied entirely on the difference, in what they said in Court and what they said or were alleged not to have said before the police: *Held*, that it is exceedingly dangerous to appeal from evidence judicially recorded under the sanction of cross-examination to alleged statements made to the police which are not judicially recorded. It is the Judge's duty to make up his mind, while the witness is before him, whether he is a witness of truth or falsehood, and it is only when the Judge sees any reason to distrust his evidence that omission in a police record can become of any importance. JUNG RAI *v.* THE KING-EMPEROR (1912) **19 C. W. N. 217**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 161**—*concld.*

——— **s. 162**—*Statements made to police during investigation—Proof of the statement by oral deposition of the police officer to whom it is made—Indian Evidence Act (I of 1872), s. 157.* During an investigation a witness stated to the police that she had seen a boy at the scene of murder soon after the offence was committed. When examined before the committing Magistrate, she denied the presence of the boy at the scene of the offence. At the trial before the Court of Sessions, she admitted the presence of the boy. The statement that the witness had made in the investigation was sought to be proved at the trial by the oral deposition of the police officer to whom it was made. The defence objected to this deposition on the ground that it offended against the provisions of s. 162 of the Criminal Procedure Code. The Sessions Judge overruled the objection and let in the evidence. The accused having appealed. *Held*, that the police officer could be allowed to depose to what the witness had stated to him in the investigation, for the purpose of corroborating what she had said at the trial. EMPEROR *v.* HANMARADDI (1914) **I. L. R. 39 Bom. 58**

——— **ss. 179 and 182—**

See PENAL CODE (ACT XLV OF 1860), S. 405. **I. L. R. 38 Mad. 639**

——— **ss. 179 to 188**—*Entrustment to native Indian subject in India—Conversion outside British India—Loss in India—Jurisdiction of Indian Courts to charge and try without certificate under s. 188.* *A* entrusted some jewels at Vellore, to the accused, a native Indian subject, for sale. The accused pledged them in Bangalore and misappropriated the proceeds at Madras. *Held*, that the British Court at Vellore had jurisdiction to try the accused for breach of trust or dishonest misappropriation without a certificate under s. 188, Criminal Procedure Code. *Sessions Judge, Tanjore* v. *Sundara Singh* (1910), *Mad. W. N. 143, Imperator* v. *Tribhun, 13 Cr. L. J. 530*, dissented from. ASSISTANT SESSIONS JUDGE, NORTH ARCOT *v.* RAMASWAMI ASARI (1914) **I. L. R. 38 Mad. 779**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)— *contd.*

——— **s. 193**—*Transfer—Appeal—"Case"—Powers of Sessions Judge. Held,* that the word 'cases' as used in s. 193 (2) of the Code of Criminal Procedure does not include appeals. *In re the petition of Mansa Asmal, I. L. R. 9 Bom. 165,* and *Chattar Pal Singh* v. *Raja Ram, I. L. R. 7 All, 621,* followed. *Allah Dei Begam* v. *Kesri Mal, I. L. R. 28 All. 93,* referred to. EMPEROR *v.* ABDUR RAZZAK (1915) **I. L. R. 37 All. 286**

——— **s. 195**—

See SANCTION FOR PROSECUTION.
I. L. R. 42 Calc. 667

——— ——— *Sanction for false complaint, appeal against—Police report based on a judgment of Court, sufficient legal basis for grant of sanction.* Though a Court should not accord a sanction to prosecute under s. 195, Criminal Procedure Code (Act V of 1898), for bringing a false complaint, merely on the strength of a police report, yet if the report is based upon a judgment of the Court in a counter-case brought against the complainant, in connection with the same matter wherein his defence which was exactly the same as his complaint was found to be false, such report is sufficient legal material for the Court to accord its sanction for false complaint. *Queen-Empress* v. *Sheik Beari, I. L. R. 10 Mad. 232,* referred to. S. 195, Criminal Procedure Code, does not prescribe any rule as to upon what materials a Court should accord its sanction nor does it say that a fresh or preliminary enquiry should be held before granting sanction. *Per* SADASIVA AYYAR, J. The complainant's sworn statement, which was disbelieved by the Magistrate, was another legal material to form the basis for the grant of sanction against him. A sanction given by the lower Court ought not to be lightly revoked by a Court of Appeal. A third appeal to the High Court to revoke a sanction, though legally made in the form of a petition under s. 195, Criminal Procedure Code, ought not to be encouraged in practice. *Re* NARAYANA NADAN (1914)
I. L. R. 38 Mad. 1044

——— **s. 195, cl.** (*1*) (c)—

——— *Sanction to prosecute—Mamlatdar's Court—Enquiry into Record of Rights—Mamlatdar's Court is Revenue Court—Land Revenue Code (Bombay Act V of 1879), Chapter XII.* A Mamlatdar holding an enquiry relating to Record of Rights, under Chapter XII of the Land Revenue Code (Bombay Act V of 1879), is a Revenue Court within the meaning of s. 195 (1) (c) of the Criminal Procedure Code (Act V of 1898). EMPEROR *v.* NARAYAN GANPAYA (1914)
I. L. R. 39 Bom. 310

——— **s. 195, cl.** (*6*)—

——— *Sanction to prosecute—Power of Appellate Court.* An application under s. 195, cl. (6), of the Code of Criminal Procedure stands on a different footing from an application in revision and is analogous to an

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 195**—*concld.*

appeal. The intention of the Legislature is that a Court of superior jurisdiction whose jurisdiction is invoked under the above section should consider the entire matter on the merits upon a complete review of all the facts. RAM RAJA DAT *v.* SHEO DAYAL (1915) . . . **I. L. R. 37 All. 439**

——— **ss. 195, 439**—*Civil Procedure Code (Act V of 1908), s. 115—24 & 25 Vict., c. 104, s. 15—Order by Civil Court refusing sanction—Jurisdiction of High Court to revise such order—Delay in applying for sanction.* The opposite party brought a suit for the recovery of money in the Court of the Munsif which was dismissed, the claim being found to be false and malicious. An application for sanction to prosecute the opposite party was however rejected by the Munsif as also by the District Judge in appeal on the ground of delay in making the application. *Held* (on an application by the Local Government against the order refusing sanction), that it was clear from the decision of the Full Bench in *Emperor* v. *Har Prasad, I. L. R. 40 Calc. 477, s. c. 17 C. W. N. 647* : that the orders of the Munsif and the Judge are not orders of a Criminal Court and cannot therefore be revised under s. 439, Criminal Procedure Code. The High Court however in the exercise of its powers under s. 115, Criminal Procedure Code, and s. 15 of the Charter Act granted sanction for the prosecution of the opposite party holding that the case being in substance a prosecution undertaken by Government, mere delay could not be taken as suggesting *mala fides.* DEPUTY LEGAL REMEMBRANCER *v.* RAM UDAR SINGH (1914) . . . **19 C. W. N. 447**

——— **ss. 195, 476**—*Indian Penal Code, ss. 471, 474—Using as genuine a forged document—Filing a forged document as coming from the custody of the person by whom it purported to be held, if constitutes 'user'—Offence committed by such act, sanction if necessary for prosecution for—Possession of forged document, knowing it to be forged and intending to use it as genuine, prosecution for, if lies without sanction—Stay of criminal proceedings pending determination of civil suit.* Where in a case under s. 474, Indian Penal Code, the prosecution story was that the accused who was the plaintiff in a rent suit himself filed a *kabuliyat* and an *amalnama* which were forged and which purported to be filed by the complainant, the defendant in the rent suit: *Held,* that the act constituted user within the meaning of s. 471, Indian Penal Code, and the offence committed was one under that section and in respect of that offence sanction under s. 195 or an order under s. 476, Criminal Procedure Code, was necessary. That no sanction is necessary for a prosecution under s. 474, Indian Penal Code. That the decision of the issues in the rent suit being largely dependent on the question whether the documents in question were or were not genuine, it was expedient that the criminal proceedings should be deferred pend-

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 195**—*concld.*

ing the final disposal of the rent suit. ASRABUDDIN SARKAR *v.* KALIDAYAL MULLIK (1914) **19 C. W. N. 125**

——— **ss. 195, 537**—*Sanction to prosecute —Irregularity or illegality—Complaint filed after expiry of the time allowed by s. 195 (6). Held,* that the taking cognizance of a complaint in respect of which sanction had been obtained under s. 195 of the Code of Criminal Procedure after the expiry of the six months' period allowed by clause (6) of the section and when objection was taken at the earliest opportunity by the accused was more than an irregularity and was not covered by the provisions of s. 537 of the Code. EMPEROR *v.* ZAHIR SINGH (1915) . **. I. L. R. 37 All. 283**

——— **ss. 196, 235, 342, 360 (*1*), 417**—

See CHARGE . **I. L. R. 42 Calc. 957**

——— **ss. 198, 200, 503**—

See COMPLAINT . **I. L. R. 42 Calc. 19**

——— **ss. 200, 254**—*Procedure—Accused summoned without the complainant being examined —Irregularity—Proceedings not vitiated—Hurt, both simple and grievous — Cumulative sentences, legality of.* The complainants made a complaint to the police to the effect that the accused beat them causing grievous hurt. The police did not send up the case and the complainants applied to the Magistrate, who sent for the police papers and summoned the accused without examining the complainants. On the date fixed the complainants were absent and the accused were discharged. Later in the day the complainants appeared and explained their delay, and the Magistrate again gave them time to produce evidence. He summoned the accused, found them guilty and sentenced them to imprisonment. *Held,* that the course the Magistrate adopted was irregular but did not vitiate the entire proceedings. *Held,* further, that where different persons are injured, grievous hurt being caused in one case and simple hurt in others, it is competent to the Court to impose separate and accumulated sentences. EMPEROR *v.* BATESHAR (1915) **I. L. R. 37 All. 628**

——— **s. 203**—*What are "no sufficient grounds" —Jurisdiction of High Court under Charter Act (24 & 25 Vict., c. 104), Art. 15.* Where a Magistrate without summoning the accused dismissed a complaint under s. 203, Criminal Procedure Code, for the reasons that there was gross delay in filing it and that the charges seemed to be made for ulterior and improper motives: *Held,* that such considerations were not relevant to the decision of the question as to whether there were no sufficient grounds for proceeding. In the absence of a finding that the complaint was false or unsustainable on the evidence likely to be available, the order of dismissal is irregular and liable to be set aside by the High Court under article 15 of the Charter Act, 24 & 25 Vict., c. 104. GANGA REDDY *v.* SAMARAPATTY MUDALY (1913) **I. L. R. 38 Mad. 512**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)— *contd.*

——— **ss. 206** *et seq.*—*Practice—Power and duties of Magistrate inquiring into case triable by Court of Sessions.* When a Magistrate has heard the evidence of the prosecution with entire disbelief, when he considers himself in a position to show that the prosecution witnesses are totally unworthy of credit, and *a fortiori* when, after examining certain witnesses named on behalf of the accused, he has come to the conclusion that evidence given by them is reliable and disproves that given by the prosecution he is well within his discretion in discharging the accused. *Fattu* v. *Fattu, I. L. R. 26 All. 564, Sheo Bux* v. *King-Emperor, 9 C. W. N. 829,* and *In re Bai Parvati, I. L. R. 35 Bom. 163,* referred to. DHARAM SINGH *v.* JOTI PRASAD (1915) . **I. L. R. 37 All. 355**

——— **s. 208**—

See COMMITMENT.

I. L. R. 42 Calc. 608

——— **s. 233**—*Omission to frame two separate charges for two offences, if vitiates trial—Distinct offence, meaning of—S. 537, irregularity cured by—Scope of section.* The petitioner was charged with and convicted of having caused hurt to two persons and thereby having committed an offence under s. 323, Indian Penal Code. Only one charge was framed against the petitioner in respect of the hurt caused to two persons. *Held, per* Sharfuddin, and Beachcroft, JJ. That the omission to frame two separate charges was an irregularity cured by s. 537, Criminal Procedure Code. The effect of the words "subject to the provisions hereinbefore contained" in s. 537, Criminal Procedure Code, cannot be that the section is to have no application if there has been any departure from any of the previous sections of the Code. Those words must be read as having reference only to ss. 529 to 536 and do not refer to the entire Code that precedes that section. That the case of *Subramania Iyer* v. *The King-Emperor, I. L. R. 25 Mad. 61: s. c. 5 C. W. N. 866,* is not an authority for the proposition that failure to observe the first part of s. 233 is fatal to the trial. Beachcroft, J.—The observation of the Judicial Committee that "their Lordships are unable to regard the disobedience to an express provision as to a mode of trial as a mere irregularity" is limited in its application to the case where charges are tried together which the law expressly says shall not be tried together in the same trial. The words "mode of trial" in that sentence cannot have reference to the formal defect of drawing up one charge instead of two. The drawing up of the charge is part of the trial but the words "mode of trial" have reference to the constitution of the trial and when their Lordships speak of "disobedience to an express provision as to a mode of trial" they do not refer to a formal defect in the proceedings in a trial which is properly constituted. Sharfuddin, J.—In *Subramania Iyer* v. *The King-Emperor, I. L. R. 25 Mad. 61: s. c. 5 C. W. N. 866,* the case before the Privy Council was

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 233**—*concld.*

not that any provision of s. 233 was contravened. The only question before their Lordships was whether the mode of trial in which one indictment contained 41 acts spread over a period longer than 12 months was or was not illegal by reason of the provisions of s. 234 of the Code. What their Lordships of the Privy Council have prohibited is that if the law expressly provides a particular mode of trial a disobedience of that vitiates the whole of the trial. It is doubtful if the framing of charges is a mode of trial, but joint trial of charges as to distinct offences would be a mode of trial and if an accused is tried jointly on several charges not coming under ss. 234, 235 236 and 239, that trial would be null and void. When two offences have been committed and they have no connection with each other, they are distinct offences within the meaning of s. 233, Criminal Procedure Code. Fletcher, J. S. 233, Criminal Procedure Code provides that for every distinct offence of which any person is accused, there shall be a separate charge. The causing of hurt to two different persons is obviously two distinct offences and there ought to have been two separate charges framed against the petitioner of the offences charged under s. 323, Indian Penal Code, and the failure to do so rendered the trial illegal. The whole of s. 537 is governed by the words " subject to the provisions hereinbefore contained." This includes, amongst other provisions the provisions contained in s. 233 and a neglect of the provisions contained in that section is not cured by s. 537. RAM SUBHEG SINGH *v.* THE KING-EMPEROR (1915) . . . **19 C. W. N. 972**

——— **s. 234**—*Section, if applies to offences against different persons.* S. 234, Criminal Procedure Code, is not limited to cases where the offences have been committed against the same person. It applies where the complainants are different persons. *Per* Fletcher, J. The power given by s. 234 is however one that requires to be used with great care and caution when there are different complainants. CHATTRADHARI MIAN *v.* THE KING-EMPEROR (1915) . . . **19 C. W. N. 557**

——— **s. 239**—

See MISJOINDER.

I. L. R. 42 Calc. 760

See MISJOINDER OF CHARGES.

I. L. R. 42 Calc. 1153

1. ——— *Joint trial of principal and abettor—Prejudice—Re-trial by another Judge.* Where there were three charges under ss. 408 and 408—109, Indian Penal Code, against two accused persons in respect of three sums said to have been defalcated on three different dates, and the Sessions Judge tried the two accused jointly in spite of objection taken by them: *Held*, that under s. 239, Criminal Procedure Code judicial discretion was given to the Court to try the principal offender and the abettor either jointly or

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

s. 239—*concld.*

separately and the manner in which this discretion should be exercised must depend on the facts of each case. The High Court, on a consideration of the circumstances of the case, held that the accused should not have been tried on the charges jointly, and set aside the convictions and sentences, and directed that the re-trial, if any, should take place before another Sessions Judge. DWARKA SING *v.* KING-EMPEROR (1913) **19 C. W. N. 121**

2. ——— " *Same transaction," determining factor as to.* In deciding whether offences are so connected as to form one and the same transaction the determining factor is not so much proximity in time as continuity and community of purpose and object. S. 239, Criminal Procedure Code is only an enabling section and does not in any way trammel the discretion of the Court. LEGAL REMEMBRANCER, BENGAL *v.* MON MOHAN ROY (1914) . **19 C. W. N. 672**

——— **s. 247**—

See COMPLAINANT.

I. L. R. 42 Calc. 365

——— *Death of Complainant, effect of, in a summons case—Substitution of relative of complainant.* In a case under s. 352, Indian Penal Code, after the death of the complainant his nephew applied for substitution of his name in place of the deceased. The Magistrate directed the case to be proceeded with, the ground assigned being that the accused had been guilty of the contempt of the process of the Court. *Held*, that it was not a sufficient ground and the Magistrate should have recorded an order of acquittal under s. 247, Criminal Procedure Code. PURNA CHANDRA MOULIK *v.* DENGAR CHANDRA PAL (1913)

19 C. W. N. 334

——— **ss. 250, 423**—*Compensation, order for —Appeal—Notice to the accused, order without, improper but not illegal—Complaints, false as well as frivolous or vexatious.* In appeals under s. 250 of the Code of Criminal Procedure, notice should ordinarily be given to the accused even though failure to give notice may not render the proceedings of the Court illegal. *Emperor* v. *Palaniappavelan, I. L. R. 29 Mad. 187*, approved. *Ambakkagari Nagi Reddy v. Basappa of Medimakulapalli, I. L. R. 33 Mad. 89*, followed. *Guruswami Naicken* v. *Tirumurthi Chetty, 27 Mad. L.J. 629*, explained. *Alagirisami Nayudu* v. *Balakrishnasami Mudaliar, I. L. R. 26 Mad. 41, Imperatrix* v. *Sadashiv, I. L. R. 22 Bom. 549, In the matter of the petition of Umrao Singh* v. *Fakir Chand, I. L. R. 3 All. 749*, and *In the matter of Teacotta Shekdar, I. L. R. 8 Calc. 393*, referred to. S. 250 not only refers to false complaints but to frivolous and vexatious complaints as well. *Emperor* v. *Bindesri Prasad, I. L. R. 26 All. 512*, and *Beni Madhab Karim* v. *Kumud Kumar Biswas, I. L. R. 30 Calc. 123*, referred to. *Ram Singh* v. *Mathura, I. L. R. 34 All. 354*, doubted. *Per* SPENCER,

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 250**—*concld.*

J. S. 250 does not declare what the powers of an Appellate Court are in disposing of appeals under clause (3) of the section. It is therefore unnecessary to invoke the aid of s. 423 for the purpose. *Per* SESHAGIRI AYYAR, J. The powers of the Appellate Court to grant redress have to be gathered from s. 423. S. 250 is not self-contained as are sections relating to grant of sanction and to convictions for contempt (ss. 195 and 486). Chapter XXXI of the Criminal Procedure Code applies to appeals against orders under s. 250 of the Code. VENKATRAMA v. KRISHNA (1915)

I. L. R. 38 Mad. 1091

——— **ss. 253 (2), 350 and 437—**

See AUTREFOIS ACQUIT.

I. L. R. 38 Mad. 585

——— **ss. 255, 342**—*Evidence Act (I of 1872), s. 30—Confession of co-accused, admissible under—Separate trials not necessary where confession made during trial.* When before a Magistrate in a statement under s. 347, Criminal Procedure Code, certain accused confessed the crime and implicated their co-accused and further under s. 255 (*1*), pleaded guilty to the charges: *Held*, that it was not necessary to try the co-accused separately to enable the confessions to be used against them under s. 30, Indian Evidence Act. *Queen-Empress* v. *Lakshmayya Pandaram, I. L. R. 22 Mad. 491*, dissented from. *Queen-Empress* v. *Pirbu, I. L. R. 17 All. 524*, and *Queen-Empress* v. *Pahuji, I. L. R. 19 Bom. 195*, distinguished. *Re* BATI REDDI (1913) **[I. L. R. 38 Mad. 302**

——— **ss. 297, 298**—*Duty of Judge in charging jury—Judge in charging jury if bound to explain law on exceptions reducing murder to culpable homicide when no exception pleaded and when there is no evidence of that—Withdrawal of case under s. 304, Indian Penal Code, if necessarily follows from direction that exceptions in s. 300 do not apply—Court if should consider case not made by counsel defending accused—"Lay down the law" in s. 297, meaning of—Non-direction, if always misdirection—Evidence Act (I of 1872), s. 105—Letters Patent, 1865, s. 26—Review of Criminal case decided by High Court in Original Criminal Jurisdiction on certificate of Advocate-General—Statement by presiding Judge as to what took place at trial—Jurisdiction of High Court to consider case when errors alleged in certificate not established.* The accused was tried and convicted in the Criminal Sessions of the High Court. He was placed on his trial on charges under ss. 302, 304 and 326, Indian Penal Code, to which he pleaded not guilty. He was defended by counsel who argued that the case against the accused was one of murder or nothing and the jury could not convict him of murder on the meagre and unsatisfactory testimony before the Court. Grave and sudden provocation was no part of the defence case. The Judge in charging the jury laid down the law under s. 302,

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 297**—*contd.*

Indian Penal Code, but not that under s. 304 or the exceptions contained in s. 300. He observed that he did not see that there was any evidence of any of the exceptions provided for in s. 300. He did not explain to the jury the application of the exception of provocation to the facts of the case. The jury found the accused guilty under s. 302 by a majority of 8 to 1 and the Judge agreeing with the verdict gave judgment in accordance therewith. No verdict was taken on the charges under ss. 304 and 326, Indian Penal Code. The case came up before a Full Bench on a certificate granted by the Advocate-General under s. 26 of the Letters Patent. *Held*, that a statement by the Trial Judge as to what took place at the trial is conclusive. That there was no illegality in not taking the verdict of the jury on the charge under s. 304, Indian Penal Code. That where there is no misdirection or other error as certified by the Advocate-General under s. 26 of the Letters Patent his certificate is misconceived and the High Court has no power to interfere. It is not within its power to reopen the case and express any opinion on the merits. That in the present case in the absence of any direct evidence of grave and sudden provocation or of facts from which this exception could be legitimately inferred the Judge was correct in excluding enquiry into the exception. That under s. 105 of the Evidence Act the Court has to regard the absence of grave and sudden provocation as proved until the contrary is proved by the accused on whom the onus lies. *Per* JENKINS, C. J. That it is not impossible under the law to leave the case to the jury under s. 304, Indian Penal Code, after holding that the exceptions enumerated in s. 300 do not apply to the circumstances of the case. That under ss. 297 and 298, Criminal Penal Code, it comes within the duty of the Judge to determine whether any evidence has been given on which the jury can properly find the question for the party on whom the onus of proof lies. It is not enough to say that there was some evidence. There must be evidence on which the jury might reasonably and properly conclude the fact to be established. That the duty of the Judge in charging the jury is to lay down the law in reference to the case presented to the Court and the facts of the case and not to perplex the minds of the jury with considerations that are outside the legitimate scope of the enquiry. That the conduct of a case by counsel is not a negligible factor even in a criminal suit though it may not conclude the accused and in approaching the question whether the Judge rightly decided as a matter of law that there was no evidence of any of the exceptions it is relevant to consider how the accused's case was placed before the Court. *Per* STEPHEN, J. That the propriety and not the possibility of an inference is the test by which a Judge should decide whether or not he should suggest a case for the consideration of the jury on his own initiative. It is the duty of a

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 297**—*concld.*

Judge to make a case for the accused on which he thinks that a verdict of not guilty may be properly returned though the case has not been suggested by or on behalf of the accused. It is the duty of defending counsel to make the Judge aware of any case that he considers may be made on behalf of the accused though he has not made it himself. *Per* WOODROFFE, J. It cannot be laid down as a general proposition of universal applicability that a Court cannot and should not consider a case in favour of the accused which he has not raised. If such a case arises on the prosecution evidence, it should be put to the jury for their consideration whatever line might have been taken by the accused or his counsel. But on the question whether an inference does arise in favour of the accused the fact that a particular defence has or has not been taken, may affect the significance of the evidence given. *Per* MOOKERJEE, J. The expression " lay down the law " in s. 297, Criminal Procedure Code, does not signify " lay down the whole law on the subject irrespective of the facts of the particular case before the Court." The reasonable construction of s. 297, Criminal Procedure Code is that the Judge should lay down the law only in so far as it bears upon the evidence adduced in the particular case. The mere fact that counsel for the accused has failed to present to the Court a particular aspect of the case cannot justify an omission on the part of the Judge to draw the attention of the jury to what appears to be a possible answer to the charge against the accused even on the prosecution evidence: it would be the duty of the Judge to draw the attention of the jury to such possible view of the case on the evidence notwithstanding that it may have escaped the counsel for the accused. Mere non-direction is not necessarily misdirection: those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood. Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by the counsel for the prosecution and for the defence respectively. *Per* HOLMWOOD, J. No error of law is committed by a Judge who refrains from directing the jury as to exceptions which have neither been raised nor relied upon by the accused and have no basis in evidence on the record. Where there is no evidence bringing the case directly within any such exception, it would be misdirection to ask the jury to come to a finding of fact on a hypothetical state of circumstances which do not bring the case within the exception as a matter of fact. KING-EMPEROR *v.* UPENDRA NATH DAS (1914) **19 C. W. N. 653**

ss. 298 (*1*) (**c**), **337**—

See PARDON . **I. L. R. 42 Calc. 856**

——— **s. 307** (*2*)—

See REFERENCE **I. L. R. 42 Calc. 786**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **ss. 337, 339**—

See PARDON . **I. L. R. 42 Calc. 756**

——— **s. 339**—*Pardon—Forfeiture of pardon—Procedure—Witness giving evidence at a sessions trial on a conditional pardon disbelieved by Judge.* A conditional pardon was given to *G* and he was tendered as a witness in a Sessions trial. The Judge before whom he was examined was of opinion that *G* had not spoken the truth, and, acquitting the accused, directed the prosecution of *G*. *G* did not plead his pardon before the committing Magistrate, but did plead it before the Sessions Judge, who set aside the commitment and discharged the accused. *Held*, that *G* was entitled to raise the plea before the Sessions Judge though he had not raised it before the committing Magistrate. *Held*, also, that the Sessions Judge in the former trial had no authority to direct the prosecution of *G* on any specific charge, but if he thought that *G* had wilfully concealed anything essential or given evidence on any point which was positively false, he was entitled to record an opinion to that effect and to invite the attention of the District Magistrate to his opinion or possibly to suggest the propriety of *G's* prosecution. *Emperor* v. *Kothia, I. L. R. 30 Bom. 611, Kullan* v. *Emperor, I. L. R. 32 Mad. 173, Alagirisami* v. *Emperor, I. L. R. 33 Mad. 514, Emperor* v. *Abani Bhusan, I. L. R. 37 Calc. 845*, referred to. EMPEROR *v.* GANGUA (1915) **I. L. R. 37 All. 331**

——— **s. 342**—*Criminal Law Amendment Act (XIV of 1908), case under, Court if may examine accused in.* It is within the competence of the Court in a case under Act XIV of 1908 to examine the accused in order to give him an opportunity of explaining the circumstances appearing on the evidence against him. EMPEROR OF INDIA *v.* NAGENDRA NATH GUPTA (1915) . **19 C. W. N. 923**

——— **s. 345**—*Compounding offences—Revision—Powers of High Court—Court not competent to allow composition in revision. Held*, that the High Court has no power to allow a case to be compounded which is before it in the exercise of its revisional jurisdiction. EMPEROR *v.* RAM CHANDRA (1914) **I. L. R. 37 All. 127**

——— **ss. 345, 439**—*Compromise—Assault in the course of which the person assaulted received fatal injury—High Court's revisional jurisdiction.* Four persons assaulted one *P* with the result that *P* died. *Held*, that it was not competent to the widow of *P* to compound the case with *P*'s assailants in respect of the injuries caused to *P*. *Held*, further, that when several persons were acquitted by the Sessions Judge and on being moved by the Government, the High Court issued warrants for their arrest, only one was arrested but the others were absconding, the High Court in the exercise of its revisional jurisdiction is competent to set aside the order of their acquittal. EMPEROR *v.* RAHMAT (1915) . . **I. L. R. 37 All. 419**

——— **s. 348**—*Indian Penal Code (Act XLV of 1860), Chaps. XII and XVII—Procedure of Ma-*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 348**—*concld.*

gistrate who cannot adequately punish. In this case the accused who had been previously convicted of an offence under s. 394, Indian Penal Code, was charged before the Sub-Magistrate of Salem with an offence under s. 411, Indian Penal Code. The Sub-Magistrate tried and convicted him of the offence and ordered his commitment to the Court of Sessions for the purpose of awarding him enhanced punishment. *Held,* that the conviction and commitment were illegal. The correct procedure to be followed in such a case is for the Magistrate either as a preliminary matter or before framing a charge to determine whether he has power to pass a sufficient sentence. If he thinks he has not such power he should frame a charge and commit the accused. *Re* SELLANDI (1913)
I. L. R. 38 Mad. 552

——— **ss. 360 (*1*), 476**—

See PERJURY . **I. L. R. 42 Calc. 240**

——— **s. 403**—*Previous acquittal*—"*Court of competent jurisdiction*"—*Sanction.* Where the law requires a previous sanction to be given before a charge can be entertained by a Court, that Court is not a Court of competent jurisdiction until the sanction has been obtained. *In re Samsudin, I. L. R. 22 Bom. 711,* followed. The fact, therefore, that a person has been tried for and acquitted of offences under the Indian Penal Code in respect of certain transaction in connection with the registration of a document is no bar to his trial for an offence under s. 82 of the Registration Act arising out of the same transactions. EMPEROR *v.* JIWAN (1914) . . **I. L. R. 37 All. 107**

——— **s. 408** (*b*)—*Assistant Sessions Judge—One accused sentenced to imprisonment for more than four years—Others to a lesser period—Appeal.* When an Assistant Sessions Judge sentences one of several accused to more than four years' rigorous imprisonment and others to lesser terms the appeals of all lie to the High Court even though the accused who is sentenced to more than four years does not appeal. EMPEROR *v.* HAR DAYAL (1915) . . . . **I. L. R. 37 All. 471**

——— **s. 423**—

See APPEAL . **I. L. R. 42 Calc. 374**

See TRADING WITH THE ENEMY.
I. L. R. 42 Calc. 1094

——— **ss. 435, 439, 491**—

See EXTRADITION WARRANT.
I. L. R. 42 Calc. 793

——— **s. 438**—*High Court will not interfere with an acquittal in revision where an appeal might have been preferred by Government.* In a case in which the complainant being absent, the Magistrate acquitted the accused under s. 247, Criminal Procedure Code, it subsequently transpired that the absence of the complainant had been procured by the fraud of the accused who had had him arrested and kept in custody on a false charge. No appeal against the acquittal was preferred by Government but the District Magistrate referred the case to the High Court under s. 438, Criminal Procedure Code. *Held,* that the High Court as a Court of Revision would not, on the District Magistrate's report set aside an order of acquittal where an appeal lay by Government against such an order. *Re* SINNU GOUNDAN (1914)
I. L. R. 38 Mad. 1028

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— **s. 438**—*concld.*

——— **s. 439**—

See ACQUITTAL **I. L. R. 42 Calc. 612**

——— **ss. 439, 562**—*Revision—Powers of High Court.* Inasmuch as action taken under s. 562 of the Code of Criminal Procedure takes the place of a sentence on an accused person, the High Court cannot in revision substitute for an order under that section a definite sentence of whipping or imprisonment. EMPEROR *v.* GHASITE (1914)
I. L. R. 37 All. 31

——— **s. 476**—

1. ——— *Jurisdiction—Limitation.* There is nothing in s. 476 of the Code of Criminal Procedure which requires a court to take action, if at all, immediately after the conclusion of the case in which the offences are said to have been committed or within any fixed time thereafter. *In the matter of the petition of Nawal Singh, I. L. R. 34 All. 393, Girwar Prasad* v. *King-Emperor, 6 All. L. J. 392,* followed. *Aiya Kannu* v. *Emperor, I. L. R. 32 Mad. 49, Rainadulla* v. *Emperor, I. L. R. 31 Mad. 140,* not followed. *In re Lakshmi Das, I. L. R. 32 Bom. 184, Emperor* v. *Rustamji Hurmusji Tarwala, 4 Bom. L. R. 778,* referred to. EMPEROR *v.* TILAK PANDAY (1915)
I. L. R. 37 All. 344

2. ——— *Penal Code (Act XLV of 1860), s. 182—Calling for a report from interested party as to truth of complaint, propriety of—Order for prosecution, without sufficient enquiry into truth of complaint.* The petitioners filed an application before the Sub-Divisional Magistrate praying for proceedings under ss. 144 and 107, Criminal Procedure Code, against several servants of a certain factory, whereupon the Magistrate called for a report from the Manager of the factory, and on receipt thereof required the petitioners to show cause against prosecution under s. 182, Indian Penal Code, and then after examining some witness on each side, but without examining the petitioners themselves, made an order under s. 476, Criminal Procedure Code, directing their prosecution for an offence under s. 182, Indian Penal Code. *Held,* that the order of the Magistrate in calling for a report from the Manager of the factory was open to great objection. That the accused being the servants of the factory, the Manager was an interested party and he ought not to have been asked to make a report in these judicial proceedings. *Held* (in setting aside the order for prosecution),

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld.*

——— **s. 476**—*concld.*

that further enquiry should be made into the truth of the petitioners' complaint, and they themselves should be examined if they chose to give evidence. EMPEROR *v.* RAFFI RAUT (1914) **19 C. W. N. 127**

——— **ss. 497, 498—**

See BAIL . **I. L. R. 42 Calc. 25**

——— **s. 522**—*Appellate Court, if can set aside order while maintaining conviction—S. 423, cl. (d)—Incidental order.* An Appellate Court has power under s. 423, cl. (*d*), which authorises the Appellate Court in appeal to make an incidental order to set aside an order under s. 522 while affirming the conviction. UJIR SHEIKH *v.* SYED ALI SHEIKH (1915) . . **19 C. W. N. 990**

——— **s. 530—**

See MAGISTRATES, BENCH OF. **I. L. R 38 Mad. 304**

——— **s. 537**—*Penal Code (XLV of 1860) ss. 182 and 211—Acquittal upon ground of absence of sanction—Practice —Revision—Application by private prosecutor against order of acquittal. Held,* that a Court of criminal appeal was not justified in setting aside a conviction under s. 182 of the Indian Penal Code on the sole ground that the offence, if any, which the appellants had committed was one under s. 211 of the Code and that no sanction for a prosecution under that section had been obtained. In this case under special circumstances the High Court entertained an application in revision presented by a private prosecutor against an order of acquittal. GUR BAKSH SINGH *v.* KASHI RAM (1914) **I. L. R. 37 All. 110**

CROSS-EXAMINATION.

——— *Practice—Accused right of—Leading questions—Evidence Act (I of 1872), ss. 143, 154.* In India, as in England, the accused are entitled in cross-examination to elicit facts in support of their defence from the prosecution witnesses wholly unconnected with the examination-in-chief. In the course of cross-examination of this character the defence are entitled, in view of the generality of s. 143 of the Indian Evidence Act, to ask leading questions. Under s. 154, the Court has the discretion to permit the prosecution to test by way of cross-examination, the veracity of their own witnesses with regard to the (unconnected) matters elicited by the defence in cross-examination. AMRITA LAL HAZRA *v.* EMPEROR (1915) . . **I. L. R. 42 Calc. 957**

CROSS OBJECTIONS.

——— **memorandum of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 22. **I. L. R. 38 Mad. 705**

CROWN.

——— **right of, to prosecute—**

See CONSPIRACY **I. L. R. 42 Calc. 957**

CUSTODY.

See GUARDIAN . **I. L. R. 38 Mad. 807**

CUSTODY OF MINOR.

See GUARDIANS AND WARDS ACT (VIII 1890), S. 25. **I. L. R. 39 Bom. 438**

CUSTOM.

See BABUANA GRANT. **I. L. R. 42 Calc. 582**

See CUSTOM OF CASTE.

See HINDU LAW—CUSTOM. **I. L. R. 42 Calc. 582**

See JAIGIR . **I. L. R. 42 Calc. 305**

See MAPPILLAS OF NORTH MALABAR. **I. L. R. 38 Mad. 1052**

See PALAS OR TURNS OF WORSHIP. **I. L. R. 42 Calc. 455**

See PRE-EMPTION. **I. L. R. 37 All. 129, 262, 472, 524**

See SOHAG GRANT. **I. L. R. 42 Calc. 582**

——— **of Marwari merchants—**

See HUNDI SHAH JOG. **I. L. R. 39 Bom. 513**

——— **validity of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3. **I. L. R. 38 Mad. 850**

——— *Tenants if may cut and appropriate timber trees—Reasonableness or unreasonableness of custom if question of law or fact—Custom not unreasonable.* The reasonableness or un-reasonableness of a custom is a question of law. *Bradburn* v. *Foley, 3 C. P. 129, 135,* followed. Where a customary right claimed by tenants to cut and appropriate trees upon the holding was upheld in the First Court, but the Judge on appeal declared the custom to be unreasonable in so far as it permitted the appropriation of timber trees: *Held,* that there was nothing unfair or dishonest or contrary to the public good in the custom and it was not unreasonable. GURAI KAR *v.* RANI KUARMONI SINGHA MANDHATA (1915) . . . . **19 C. W. N. 1188**

CUSTOM OF CASTE.

See HINDU LAW—MARRIAGE. **I. L. R. 39 Bom. 538**

D

DAMAGE.

See DAMAGES.

See ELECTRICITY ACT (IX OF 1910), SS. 14, 19 . . **I. L. R. 39 Bom. 124**

DAMAGES.

See LIQUIDATED DAMAGES.

——— **action for—**

See TRADE-MARK.
I. L. R. 42 Calc. 262.

——— **ascertainment of—**

See CONTRACT, BREACH OF.
I. L. R. 38 Mad. 801

——— **assessment of—**

See PRACTICE . **I. L. R. 42 Calc. 819**

——— **for negligence of agent—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 6 (e) . **I. L. R. 38 Mad. 138**

——— **interest on—**

See TRUSTEE . **I. L. R. 38 Mad. 71**

——— **suit for—**

See INJUNCTION . **I. L. R. 42 Calc. 550**

——— **suit for wrongful dismissal of a Municipal Officer—**

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS. 2, 46 AND 167.
I. L. R. 39 Bom. 600

DAMDUPAT, RULE OF.

——— *Mortgage between Hindus, whether the rule of Damdupat applies to—Transfer of Property Act (IV of 1882) s. 4—Contract Act (IX of 1872), s. 37.* There is nothing in the Transfer of Property Act (read with the Contract Act) to preclude the rule of Damdupat from applying to mortgages between Hindus. *Madhwa Sidhanta Onahini Nidhi* v. *Venkataramanjulu Naidu, I. L. R. 26 Mad. 662,* not followed. *In the matter of Hari Lall Mullick, I. L. R. 33 Calc. 1269, Nanda Lal Roy* v. *Dhirendra Nath Chakravarti, I. L. R. 40 Calc. 710, Jeewanbai* v. *Manordas Lachmondas, I. L. R. 35 Bom. 199,* and *Sundarabai* v. *Jayavant, I. L. R. 24 Bom. 114,* referred to. KUNJA LAL BANERJI *v.* NARSAMBA DEBI (1915)
I. L. R. 42 Calc. 826

DARBHANGA RAJ.

See HINDU LAW—CUSTOM.
I. L. R. 42 Calc. 582

DASTURAT.

——— *Nature of the right of—Immoveable property, interest in—Circumstances justifying inference as to the existence and lawful origin of—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 131—"Refusal," meaning of.* The plaintiffs sued for a declaration of their right to recover certain sums of money as *dasturat* at specified annual rates and for recovery of the sums as a charge on properties in the possession of the defendants. It appeared that the plaintiffs' claim for *dasturat* was asserted and allowed in Courts of law since 1795, sometimes in spite of opposition, on other occasions without opposition :

DASTURAT—*concld.*

Held, that the inference drawn by the lower Courts that the right alleged by the plaintiffs did exist and had a lawful origin was legitimate and the plaintiffs had an enforceable right to realise the sums claimed as *dasturat* from the defendants. That Art. 131 of the Second Schedule of the Limitation Act of 1877 was applicable to the case. That "refusal" in Art. 131 plainly implies a previous demand and as the plaintiffs asserted that there had been no demand and refusal within twelve years of the commencement of the present suit, the burden was cast upon the defendants to establish that the plaintiffs did make a demand and that the defendants did refuse, and as there was no evidence of this demand and refusal the suit was *primâ facie* not barred under Art. 131. That the right claimed was clearly in the nature of an interest in immovable property being a right vested in the proprietors of a specified estate to receive certain sums of money periodically from proprietors of other estates in their character as such. Under the Limitation Act of 1859, a suit to recover such an interest would have to be brought within twelve years from the date when the cause of action arose upon the denial or refusal of the right and as it was not shown that there was any refusal, while the Act of 1859 was in force, it must be held that the right was not extinguished before the Limitation Act of 1871 came into force. HEM CHANDRA CHAUDHURI *v.* ATUL CHANDRA CHAKRABARTTY (1913) . . **19 C. W. N. 386**

DAUGHTERS.

See HINDU LAW—INHERITANCE.
I. L. R. 38 Mad. 1144

DEATH.

——— **sentence of—**

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 42 Calc. 739

DEBT.

See HINDU LAW—DEBT.
I. L. R. 39 Bom. 113

——— **attachment of—**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 29, 62 AND 120.
I. L. R. 38 Mad. 972

——— **part of—**

See SUCCESSION CERTIFICATE.
I. L. R. 42 Calc. 10

——— **payable in kind—**

See INTEREST ACT (XXXII OF 1839).
I. L. R. 38 Mad. 464

——— *Charge—Assignment—Transfer of Property Act (IV of 1882), s. 55, sub-s. (4).* There is no authority for the contention that a charge such as the one mentioned in s. 55, sub-s. (4) of the Transfer of Property Act, is merely a personal right which cannot be transferred to an assignee. The debt could undoubtedly be transferred and there is no reason why the security for the debt should not also be transferred

DEBT—*concld.*

with it. *Hari Ram* v. *Denaput Singh, I. L. R. 9 Calc. 167,* and *Moti Lal* v. *Bhagwan Das, I. L. R. 31 All. 443,* distinguished. SHEONANDAN LAL *v.* ZAINAL ABDIN (1914) . **I. L. R. 42 Calc. 849**

DEBTOR.

See EMBARRASSMENT.
I. L. R. 42 Calc. 652

See PROVINCIAL INSOLVENCY ACT (III OF 1907), s. 31 . **I. L. R. 37 All. 383**

DEBTOR (LITERATE).

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), s. 69.
I. L. R. 38 Mad. 438

DECLARATION.

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

See STAMP ACT (II OF 1899), s. 57.
I. L. R. 38 Mad. 349

DECLARATION AND INJUNCTION, SUIT FOR.

——— *Whether a suit for declaratory decree with consequential relief—Court fee payable, whether ad valorem—Court Fees Act (VII of 1870), s. 7, cl. (4)(c).* A suit for a declaration that a mortgage-decree is not binding on the plaintiff and for an injunction restraining the defendant from executing the same is a suit for a declaratory decree with consequential relief within the meaning of s. 7, cl. (4) (c) of the Court Fees Act and an *ad valorem* fee is payable on the valuation fixed in the plaint. ARUNACHALAM CHETTY *v.* RANGASAWMY PILLAI (1914) . **I. L. R. 38 Mad. 922**

DECLARATION OF LONDON.

See CONFISCATION.
I. L. R. 42 Calc. 334

DECLARATION OF PARIS.

See CONFISCATION.
I. L. R. 42 Calc. 334

DECLARATORY SUIT.

See CIVIL PROCEDURE CODE (1908), s. 9.
I. L. R. 37 All. 313

See MADRAS LAND ENCROACHMENT ACT (MAD. III OF 1905) **I. L. R. 38 Mad. 674**

See PENSIONS ACT (XXIII OF 1871), SS. 4, 5, 6 . . **I. L. R. 37 All. 338**

DECREE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 24 . **I. L. R. 38 Mad. 25**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 959

See COURT FEES ACT (VII OF 1870), S. 7 . . **I. L. R. 38 Mad. 1184**

See DECREE FOR DIVORCE.

DECREE—*contd.*

See DECREE-HOLDER.
I. L. R. 38 Mad. 677

See DECREE NISI.

See DEFENDANT, DEATH OF.
I. L. R. 38 Mad. 682

See FRAUD . **I. L. R. 38 Mad. 203**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 91 . **I. L. R. 38 Mad. 321**

See MISTAKE . **I. L. R. 37 All. 323**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 34 . **I. L. R. 37 All. 452**

See RATEABLE DISTRIBUTION.
I. L. R. 42 Calc. 1
I. L. R. 38 Mad. 221

——— **based on perjured evidence—**

See FRAUD . . **I. L. R. 37 All. 537**

——— **construction of—**

See EXECUTION OF DECREE.
I. L. R. 37 All. 97

——— **for joint possession—**

See HINDU LAW—HUSBAND AND WIFE.
I. L. R. 38 Mad. 1036

——— **for sale—**

See MORTGAGE . **I. L. R. 37 All. 309**

——— **reversed in appeal—**

See ASSIGNEE OF A MONEY-DECREE.
I. L. R. 38 Mad. 36

——— **transfer of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.
I. L. R. 38 Mad. 1076

——— **upon compromise—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 48 . **I. L. R. 39 Bom. 256**

1. ——— *Execution—Garnishee order—Revenue payable on estate ordered to be paid into Court—Revenue in future can be ordered to be paid—Civil Procedure Code (Act V of 1908), O. XXI, r. 52—Darkhast kept alive as long as the decree remains unsatisfied—Practice and procedure.* Under a consent decree the sum found due was made payable in instalments; and the plaintiff was to be put in possession of the defendants' lands and also to receive the defendants' share of the revenues of three Inam villages. In the execution proceedings under the decree in 1894, a consent order was taken whereby defendant No. 1 was constituted the plaintiff's tenant of the lands and the revenues of the villages were to be paid to the plaintiff through the Court. The Court then passed an order to the effect that the revenues of the villages should be paid by the village officers into Court. The payments so made were made over to the plaintiff till 1892, when the Court struck off the application for execution

DECREE—*contd.*

on the ground that the Court was *functus officio* for all purposes of execution as soon as it had put the plaintiff in possession of the lands in 1895 and issued one garnishee order of the same year. The plaintiff having appealed: *Held*, that the order passed upon the darkhast of 1894 continued alive and effective up to 1912, and would remain in force till the plaintiff's debt was satisfied. PER CURIAM: Property attached yielding a revenue or producing interest or dividends is within the meaning and contemplation of all garnishee orders issued under O. XXI, r. 52 of the Civil Procedure Code (Act V of 1908); and that such interest or dividend becoming due, and therefore in the future, is expressly provided for in that rule, and it would follow upon the same principle that if an estate yielding a revenue were properly attachable under the same rule, then revenue *in futuro* would be for all the purposes of such attachment on the same footing as interest or dividend. UMABAI *v.* AMRITRAO ANANT (1914)
I. L. R. 39 Bom. 80

2. ——— *Suit in a Baroda Court—Defendant's objection to jurisdiction and other pleas—Defendant's contentions overruled—Decree against defendant—Transfer of decree to a British Court for execution—Refusal to execute the decree on the ground of nullity—Voluntary submission to the jurisdiction of the Baroda Court—Execution by British Court.* In a suit brought in a Baroda Court, the defendant objected to the jurisdiction of the Court to try the suit and also raised other pleas. The Court overruled the defendant's contentions and passed a decree against him. The decree having been subsequently transferred to a British Court for execution that Court refused to execute it on the ground of its being a nullity as the defendant had not voluntarily submitted to the jurisdiction of the Baroda Court, he having protested against the right of that Court to entertain the suit at the earliest opportunity. *Held*, that, having regard to circumstances, the case was one of voluntary submission to the jurisdiction of the Baroda Court as the defendant had raised other pleas along with his objection to the jurisdiction of the Court to entertain the suit and that the decree passed by that Court could be executed by a British Court. *Parry & Co.* v. *Appasami Pillai, I. L. R. 2 Mad. 407*, distinguished. HARCHAND PANAJI *v.* GULABCHAND KANJI (1914) . . . **I. L. R. 39 Bom. 34**

3. ——— *Suit to set aside decree on ground of mistake, if lies—Finality of litigation—Difference between consent decree and decree made on consent—Fraud. Per* JENKINS, *C. J.*—It is well settled that a contract of parties is none the less a contract because there is superadded to it the command of a Judge. It still is a contract of the parties and as the contract is capable of being rectified for an appropriate mistake so, as a necessary consequence, is the decree which is merely a more formal expression given to that contract. There is no analogy between such a decree and a decree obtained upon contest

DECREE—*concld.*

and giving accurate expression to the Court's intention, and a fresh suit does not lie to set it aside on the ground that the Judge was mistaken. *Per* HOLMWOOD, *J.* (concurring). It does not matter whether the decree accurately expresses the intention of the judgment as that is a matter for amendment and not a separate suit. *Per* JENKINS, *C. J.* A decree can be set aside on the ground of fraud if of the required character. KUSODHAJ BHAKTA *v.* BROJO MOHAN BHAKTA (1915)
19 C. W. N. 1228

DECREE FOR DIVORCE.

See DIVORCE ACT (IV OF 1869), S. 37.
I. L. R. 39 Bom. 182

DECREE-HOLDER.

See LIMITATION ACT (IX OF 1908), S. 22.
I. L. R. 38 Mad. 837

See LIMITATION ACT (IX OF 1908), SCH. I ARTS. 29, 62 AND 120.
I. L. R. 38 Mad. 972

——— **fraud of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.
I. L. R. 38 Mad. 1076

——— *Petition for execution—Sale of properties not mentioned in the decree—Personal decree—Civil Procedure Code (Act V of 1908), O. XXXIV, r. 6—Application, if necessary—Court's power to amend—Code of Civil Procedure (Act V of 1908), s. 153.* A decree-holder cannot ignore the terms of a decree directing him to bring the properties mentioned in it to sale before proceeding against other properties of the judgment-debtor. *Manti Kamoji* v. *Chodimalla Ramamurthy, 3 Mad. L. T. 335, Varadiah* v. *Raja Perumal Raja Bahadur, Appeal Against O. No. 257 of 1909*, followed. But when the judgment-debtor has no saleable interest in the properties directed to be sold, the decree-holder need not go through the farce of putting them up to sale. A decree directing the defendant to pay a certain sum, and in default directing the hypothecated property to be sold is a personal decree. *Raja of Kalahasti* v. *Varadachariar, 21 Mad. L. J. 1036*, followed. When there is a personal decree, no application for another personal decree under O. XXXIV, r. 6, can be granted. *Dinabandhu* v. *Mashuda, 16 C. L. J. 318*, referred to. S. 153 of the Code of Civil Procedure (Act V of 1908), enables the Court under the above circumstances to order, if necessary, an amendment of the execution petition. PERIYASAMI KONE *v.* MUTHIA CHETTIAR (1913)
I. L. R. 38 Mad. 677

DECREE-HOLDERS (RIVAL).

See RATEABLE DISTRIBUTION.
I. L. R. 38 Mad. 221

DECREE NISI.

——— *Decree for possession on payment of a certain sum within six months, in*

DECREE NISI—*concld.*

default, forfeiture of the right to recover possession—Appeal—Confirmation of decree—The term of six months to run from the date of the final decree. The plaintiff brought a suit to recover possession of property as purchaser from defendants 1—6 and to redeem the mortgage of defendant 7. The first Court having dismissed the suit, the appellate Court, on plaintiff's appeal, passed a decree directing the plaintiff to recover possession on payment to defendants 1—6 of a certain sum within six months from the date of its decree and then to redeem defendant 7, and on plaintiff's failure to pay within six months from the date of the decree he should forfeit his right to recover possession. All parties being dissatisfied with the decree, the plaintiff preferred a second appeal to the High Court and the two sets of defendants filed separate sets of cross objections. The High Court confirmed the decree and the plaintiff's second appeal and the defendants' cross objections were dismissed. Within six months of the date of the High Court's decree the plaintiff deposited in Court the amount payable by him and applied for execution. Defendant 7 contended that the plaintiff not having complied with the terms of the decree of the first appellate Court, his right to recover possession in execution was forfeited. The lower Courts upheld the defendant's contention and dismissed the *darkhast*. On second appeal by the plaintiff, *Held*, reversing the decree, that the time for executing a decree *nisi* for possession ran from the date of the High Court's decree confirming the decree of the lower Court, for what was to be looked at and interpreted was the decree of the final appellate Court. *Raja Bhup Indar Bahadur Singh* v. *Bijai Bahadur Singh, L. R. 27 I. A. 209*, and *Nanchand* v. *Vithu, I. L. R. 19 Bom. 258*, followed. SATWAJI BALAJIRAV *v.* SAKHARLAL ATMARAMSHET (1914)

I. L. R. 39 Bom. 175

DECREE ON MORTGAGE.

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179.

I. L. R. 39 Bom. 20

DEED.

1. ——— *Interpretation of deed—Reference to conduct where language unambiguous, if permissible.* Where the language of a written instrument is clear, no reference is permissible for its interpretation to the conduct of the parties. ROHIM BAKSH MANDAL *v.* SHAJAD AHMAD (1914) . . . **19 C. W. N. 1311**

2. ——— *Material alteration of—Destruction of right of suit—Negotiable Instruments Act (XXVI of 1881), s. 87.* An alteration in a document which has the effect of enabling the payee to sue on the document in a Court where he could not have sued on it in its original form is a material alteration and as such destroys the right of action on the document. Altering a negotiable instrument by causing the words "or order" to disappear and making it non-negotiable is a material alteration, under ordinary law and also under s. 87 of the Negotiable Instruments Act (XXVI of 1881). The facts that the payee eventually filed the suit in another Court different from the one intended at the time of the alteration and that it was not necessary for him to rely on the altered state of document to enable him to succeed therein do not make the alteration any the less material. *Gour Chandra Das* v. *Prasanna Kumar Chandra, I. L. R. 33 Calc. 812*, followed. *Decroix, Verley et Cie.* v. *Meyer & Co., 25 Q. B. D. 343*, distinguished. LAKSHMAMMAL *v.* NARASIMHARAGHAVA AIYANGAR (1913)

I. L. R. 38 Mad. 746

DEED, CONSTRUCTION OF.

See CONSTRUCTION OF DEED.

I. L. R. 39 Bom. 119

——— "*Easements, advantages, appurtenances, held and enjoyed as part of the house,*" *meaning of.* Words in a sale-deed of a house, such as the following:—"All my right, title and interest in and to the said house and ground with all the buildings, fixtures, rights, easements, advantages and appurtenances, whatsoever to the said house and ground appertaining or with the same held and enjoyed or reputed as part thereof or appurtenant thereto," are wide enough to convey not only actually existing easements but also (*a*) a way formerly enjoyed as an easement, but as to which the right had been suspended by unity of possession of the two tenements, and (*b*) a way, which during the unity of possession, had never existed as an easement but was in fact used for the convenience of one of the tenements afterwards severed. *Chunder Coomer Mookerji* v. *Koylash Chunder Sett, I. L. R. 7 Calc. 665*, followed. If on a disposition of property belonging to the same owner, tenements are severed and conveyed to different people either simultaneously or at different times but as part of one transaction, *quasi easements*, apparent and continuous and necessary for the enjoyment of the several tenements as they were enjoyed at the time of severance, will pass to the grantees thereof. In either case the conveyances are regarded in equity as one transaction, and each grantee who takes his tenement with the knowledge that the other tenements are being conveyed at the same time or will be conveyed as part of the same transaction, is deemed, in the absence of express stipulation, to take the land burdened or benefited, as the case may be, by the qualities which the previous owner had a right to attach to the different portions of his property before severance. VENKIAH *v.* KRISHNAMOORTHY (1913) . . . . **I. L. R. 38 Mad. 141**

DEED OF SALE.

——— **construction of—**

See VENDOR AND PURCHASER.

I. L. R. 42 Calc. 56

DEFAULT.

——— **dismissal for—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10 . **I. L. R. 38 Mad. 867**

——— **in payment of instalments—**

See LIMITATION **I. L. R. 38 Mad. 374**

DEFENDANT, DEATH OF.

——— *Legal Representative not brought on record—Decree subsequent to such death, validity of—Objection to such decree in execution.* A decree passed after the death of the defendant and before his legal representative was brought on the record is a nullity. *Janardhan* v. *Ramachandra, I. L. R. 26 Bom. 317, Radha Prasad Singh* v. *Lal Sahab Rai, I. L. R. 13 All. 53,* and *Imdad Ali* v. *Jagan Lal, I. L. R. 17 All. 478,* followed. *Goda Coopooramier* v. *Soondrammall, I. L. R. 33 Mad. 167,* distinguished. Objection to that effect can be taken in the execution proceedings. SUBRAMANIA *v.* VAITHINATHA (1913) **I. L. R. 38 Mad. 682**

DEKKHAN AGRICULTURISTS' RELIEF ACT (BOM. XVII OF 1879).

——— **ss. 3 (w), 10 and 53—**

——— *Suit falling under s. 3 (w)—Decision not appealable—Revision by District Judge.* The decision in a suit falling under s. 3 (*w*) of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is not appealable according to the provisions of s. 10 of the Act. Under s. 53 of the Act, the District Judge alone and not the Subordinate Judge of the First Class is authorized, in such a case, to pass an order in revision. SITARAM MORAPPA *v.* VISHVANATH SHRI KHANDOBA (1914) . . . . **I. L. R. 39 Bom. 165**

——— **ss. 12, 13—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11, EXPL. IV; O. II, R. 2. **I. L. R. 39 Bom. 138**

——— **s. 13—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 2, 97. **I. L. R. 39 Bom. 422**

1. ——— *Mortgage by Vatandar—Suit for account and redemption—Adverse possession by mortgagee—Hereditary Offices Act (Bom. Act III of 1874), s. 5—Mesne profits from the date of suit.* One Madhavrao, grandfather of the plaintiff, by a deed dated the 15th July 1867 mortgaged with possession certain Vatan Inam lands to Babaji Anant, an ancestor of the defendants. Madhavrao died, 1873, and in 1909 plaintiff sued to redeem the mortgage under the provisions of the Dekkhan Agriculturists' Relief Act, 1879. The defendants contended that by reason of the provisions of s. 5 of the Vatan Act, the mortgage became void on the death of Madhavrao and that they had been in possession adversely since that date. The Court of first instance disallowed the contention on the ground that the mortgagee

DEKKHAN AGRICULTURISTS' RELIEF ACT (BOM. XVII OF 1879)—*contd.*

——— **s. 13—*concld.***

claimed to hold the property as such and not as owner, and after taking accounts passed a decree in favour of the plaintiff awarding mesne profits from the date of suit till possession at Rupees four hundred a year. This decree was confirmed by the lower appellate Court. On appeal to the High Court: *Held,* that the mortgagee remained a mortgagee for the purpose of the redemption suit, even assuming that he had been in possession for more than twelve years since the death of the original mortgagor. Unless there was some definite indication on the part of the person in possession that he would from a certain date claim as absolute owner, and not as mortgagee, he could only acquire by adverse possession the limited interest to which he was entitled at the mortgagor's death, namely, that of a mortgagee. *Held,* further, that mesne profits from the date of suit could not be awarded as the enforcement of the provisions of s. 13 of the Dekkhan Agriculturists' Relief Act, 1879, placed the mortgagor in a much more favourable position than he would be in, if he relied upon the terms of the contract, and no presumption could arise that the mortgagee was, apart from the provisions of the Act, not entitled to retain possession after the date of the institution of the suit. *Janoji* v. *Janoji, I. L. R. 7 Bom. 185,* applied. RAMCHANDRA VENKAJI NAIK *v.* KALLO DEVJI DESHPANDE (1915) **I. L. R. 39 Bom. 587**

——— **ss. 13, 15D and 16—**

——— *Monetary dealings, mortgages and promissory notes—Suit for general account and redemption—One general account of mortgage and promissory note transactions—Mortgages found to be satisfied—Surplus profits under mortgage transactions applied in reduction of the claim on promissory notes—Provision of the Dekkhan Agriculturists' Relief Act (XVII of 1879) for two different classes of suits for account by agriculturists—s. 15 D and 16 of the Act—Mortgage account entirely separate from the promissory note account—Mortgagee not accountable for surplus profits under mortgage transactions.* In a suit for general account under the Dekkhan Agriculturists' Relief Act (XVII of 1879) and for redemption of mortgaged property, the plaintiff combined his claim for account of the mortgage transactions with his claim for an account of moneys lent upon promissory notes. In taking an account the Court made up one general account of the mortgage transactions and the promissory note transactions and having found that the mortgages were satisfied, applied the profits subsequent to the date of the satisfaction of the mortgage debts in the account in reduction of the amount due to the defendant on the promissory notes. *Held,* that the account could not be accepted. The Dekkhan Agriculturists' Relief Act (XVII of 1879) has made provision for two different classes of suits for account by agriculturists. S. 15D of the Act relates

DEKKHAN AGRICULTURISTS' RELIEF ACT (BOM. XVII OF 1879)—*concld.*

——— **s. 13**—*concld.*

purely and exclusively to mortgage transactions. Under that section the plaintiff-agriculturist may have either a declaration of the amount due or he may combine a declaration of the amount due with a decree for redemption. S. 16 of the Act entitles the plaintiff to sue for a general account of money dealings between him and the lender and for a bare declaration of the amount due without any relief being claimed. Thus the two sections where accounts are contemplated stand on a different footing. Under the Act the mortgage account must be treated as entirely separate from the promissory note account so that the lender mortgagee would not be accountable for surplus profits received by him after the date when the mortgage claims were satisfied. *Janoji* v. *Janoji, I. L. R. 7 Bom. 185* and *Ramchandra Baba Sathe* v. *Janardan Apaji, I. L. R. 14 Bom. 19*, referred to. LAXMANDAS HARAKCHAND *v.* BABAN (1914) **I. L. R. 39 Bom. 73**

DELAY.

See PROBATE . **I. L. R. 42 Calc. 480**

DELHI LAW ACT (XIII OF 1912).

See FORFEITURE. **I. L. R. 42 Calc. 730**

DEMANDS.

See MAHOMEDAN LAW—PRE-EMPTION. **I. L. R. 37 All. 522**

DEPOSIT.

See CONTRACT ACT (IX OF 1878), SS. 39, 55, 64, 65, 73, 74 AND 75. **I. L. R. 38 Mad. 178**

——— **of earnest money, forfeiture of—**

See CONTRACT, BREACH OF. **I. L. R. 38 Mad. 801**

DEPOSITION.

See PERJURY—WITNESS. **I. L. R. 42 Calc. 240**

——— **reading over of—**

See CHARGE . **I. L. R. 42 Calc. 957**

DEPUTY COMMISSIONER.

See PATNI LEASE. **I. L. R. 42 Calc. 1029**

DESHGAT VATAN LANDS.

See GRANT . **I. L. R. 39 Bom. 68**

DESTINATION.

See TRADING WITH THE ENEMY. **I. L. R. 42 Calc. 1094**

DETECTIVE.

——— **privilege of—**

See CHARGE . **I. L. R. 42 Calc. 957**

DIRECTOR.

——— **personal interest of—**

See COMPANY . **I. L. R. 38 Mad. 991**

DISBELIEF.

See EVIDENCE . **I. L. R. 42 Calc. 784**

DISCOVERY.

See REVIEW . . **I. L. R. 42 Calc. 830**

DISCRETION OF COURT.

See APPELLATE COURT. **I. L. R. 39 Bom. 386**

See COMPANY . **I. L. R. 39 Bom. 16**

See LIMITATION ACT (IX OF 1908), S. 5. **I. L. R. 37 All. 267**

DISCRETIONARY RELIEF.

See FRAUD . **I. L. R. 38 Mad. 203**

DISMISSAL.

See MUNICIPAL OFFICER. **I. L. R. 39 Bom. 600**

——— **for default—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10 . **I. L. R. 38 Mad. 867**

——— **of an editor of a newspaper—**

See COMPANY . **I. L. R. 38 Mad. 991**

DISOBEDIENCE.

See PENAL CODE (ACT XLV OF 1860) SS. 188 AND 269. **I. L. R. 38 Mad. 602**

DISPOSSESSION.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 62 AND 97. **I. L. R. 38 Mad. 887**

DISPUTE CONCERNING LAND.

——— *Evidence not recorded according to law, but memorandum taken down and signed by the Magistrate personally—Legality of final order—Criminal Procedure Code (Act V of 1898), ss. 145, 356 (1) and (3).* The provisions of sub-s. (*1*) of s. 356 are mandatory. Sub-s. (*3*) applies only where evidence has been recorded in accordance with sub-s. (*1*) but not personally by the Magistrate. Where the Magistrate did not take down the evidence himself nor was it taken down in his presence and hearing and under his personal direction and superintendence nor signed by him, but he made a memorandum thereof and signed the same :—*Held*, that the provisions of s. 356 had not been complied with, and that the order declaring the opposite party to be in possession was bad in law. SADANANDA MANDAL *v.* KRISHNA MANDAL (1914) **I. L. R. 42 Calc. 381**

DISSOLUTION OF PARTNERSHIP.

See APPEAL . **I. L. R. 42 Calc. 914**

See MINOR . **I. L. R. 42 Calc. 225**

DISTRAINT.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 53 (*2*). **I. L. R. 38 Mad. 1140**

DISTRAINT—*concld.*

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192 **I. L. R. 38 Mad. 655**

DISTRICT DEPUTY COLLECTOR.

See MAMLATDARS' COURTS ACT, BOMBAY (BOM. II OF 1906), s. 23.
I. L. R. 39 Bom. 552

DISTRICT JUDGE.

See RELIGIOUS ENDOWMENT ACT (XX OF 1863), s. 10 . **I. L. R. 38 Mad. 594**

——— **transfer by—**

See TRANSFER . **I. L. R. 42 Calc. 842**

DISTRICT MUNICIPAL ACT (BOM. III OF 1901).

——— **ss. 2, 46 and 167—**

——— *Dismissal of a Municipal Officer—Suit for damages for wrongful dismissal.* When a District Municipality exercising the power given to it by the District Municipal Act (Bom. Act III of 1901) or the statutory rules made under the Act, dismisses an officer of the Municipality, that is an act done or purporting to have been done in pursuance of the Act within the meaning of s. 167. MUNICIPALITY OF RATNAGIRI *v.* VASUDEO BALKRISHNA (1915)
I. L. R. 39 Bom. 600

DIVESTING OF PROPERTY.

——— **by adoption—**

See HINDU LAW—ADOPTION.
I. L. R. 38 Mad. 1105

DIVORCE.

See HINDU LAW—MARRIAGE.
I. L. R. 39 Bom. 538

——— *Evidence Act (I of 1872), ss. 60, 112, 118 and 120—Non-access, competency of parties to testify to—Legitimacy of child—Expert opinion on legitimacy, relevancy of.* When in a suit for divorce the petitioner (husband) did not make any person a co-respondent but simply averred that his wife was generally leading an immoral life, a judge would be wrong in adding a person as co-respondent *suo motu* without calling on the petitioner to amend the petition by making the necessary allegations against him. In the absence of the adoption of such a course the proper order to make is to strike out the co-respondent's name from the proceedings. Whatever might be the English common law on the subject, under ss. 118 and 120 of the Indian Evidence Act both the parties to proceedings for divorce are competent to give evidence as to non-access and illegitimacy of the child. *Held*, on the evidence in the case that a child born 11 months after the cessation of marital intercourse was illegitimate and that the petitioner was entitled to a divorce. *Rosario* v. *Ingles, I. L. R. 18 Bom. 468*, referred to. Under s. 60 of the Evidence Act a Court can consider and act upon the opinions of experts contained in treatises as regards the question whether a

DIVORCE—*concld.*

particular child could or could not have been begotten just before the period of non-access. JOHN HOWE *v.* CHARLOTTE HOWE (1913)
I. L. R. 38 Mad. 466.

DIVORCE ACT (IV OF 1869).

——— **ss. 4, 6, 7, 8, and 15—**

See BOMBAY CIVIL COURTS ACT (XIV OF 1869), s. 16 . **I. L. R. 39 Bom. 136**

——— **s. 37**—*Decree for divorce—Permanent maintenance—Award of a lump sum—Payment.* In a suit for divorce brought by the wife, the District Judge, has, under s. 37 of the Indian Divorce Act (IV of 1869), power to make the order for payment of a lump sum for the permanent maintenance of the wife. *Per* HAYWARD *J.* :— The plain meaning of the words of s. 37 of the Indian Divorce Act (IV of 1869) is that the gross sum of the money should be paid absolutely to the wife and that the annual sum of money should be limited for the period of her life. TAYLOR (MISS) *v.* CHARLES BLEACH (1914)
I. L. R. 39 Bom. 182

——— **s. 57**—*Marriage solemnized before the expiry of six months as required by, validity of* S. 57 of the Divorce Act (IV of 1869) expressly prohibits remarriage within six months of the making of the decree-absolute; the Indian Law does not completely dissolve the tie of marriage until the lapse of a specified time after a decree of dissolution and the marriage is still in force within the meaning of s. 19 (*4*), so as to give the Court jurisdiction under s. 19 to pronounce a decree of nullity regarding such prohibited marriage. *Jackson* v. *Jackson, I. L. R. 34 All. 203*, followed. *Chichester* v. *Mure, 32 L. J. 146*, and *Warter* v. *Warter, L. R. 15 P. D. 152*, referred to. BATTIE *v.* BROWN (1913) . . **I. L. R. 38 Mad. 452**

DOCTRINE OF PROTECTION.

See OCCUPANCY HOLDING.
I. L. R. 42 Calc. 745

DOCUMENT.

See HINDU LAW—ADOPTION.
I. L. R. 39 Bom. 441

1. ——— *Non-production of, where not called upon by opponent, if matter for comment.* It is open to a litigant to refrain from producing any documents, not forming part of his case, that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails to do so neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents. BILAS KUNWAR *v.* DESRAJ RANJIT SINGH (1915)
19 C. W. N. 1207

2. ——— *Release, document written but not signed by executant if operates as—Name written at the commencement of document,*

DOCUMENT—*concld.*

if sufficient. The place and manner of signature of a document is immaterial provided that the signature is inserted in such a manner as to authenticate the document, and where the instrument is in the handwriting of the party to be charged, it is sufficient if his name is inserted at the commencement. Where this was the case: *Held*, that the document was operative as a release though not signed by the executant. GANGARAM AGARWALA *v.* LACHIRAM KISHEN DYAL (1914) **19 C. W. N. 611**

DOWER.

See MAHOMEDAN LAW—GIFT.
I. L. R. 42 Calc. 361

DOWER-DEBT.

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 37 All. 522

DRAINS.

——— right of municipality to—

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

DRUNKENNESS.

See PENAL CODE (ACT XLV OF 1860), S. 86 . **I. L. R. 38 Mad. 479**

E

EARNEST-MONEY.

——— deposit of, forfeiture of—

See CONTRACT, BREACH OF.
I. L. R. 38 Mad. 801

EASEMENT.

See EASEMENTS ACT (V OF 1882).

——— infringement of—

See EASEMENT.
I. L. R. 38 Mad. 280

——— unknown to law—

See EASEMENT . **19 C. W. N. 864**

1. ——— *Light and Air—Ancient light, infringement of—Nuisance—Measure of right—Requirement of light for the ordinary purposes of inhabitancy or business of the tenement according to the ordinary notions of mankind—Concurrent findings of fact—Grounds of appeal relating not to fact, but to pure question of law.* In this case which was an appeal in an action for damages for the infringement of the appellant's alleged rights of light and air, the Judicial Committee held that though there were concurrent findings of fact in the Courts below, yet the grounds of appeal did not relate to those findings but to the question whether the Courts below had taken the proper view of the legal rights of the appellants, and whether, accordingly, the test which they had applied on the question of the infringement of the appellants' rights was the correct one. That

EASEMENT—*contd.*

was a pure question of law which admittedly turned upon the interpretation to be given to the decision of the House of Lords in *Colls* v. *The Home and Colonial Stores, [1904] A. C. 179,* when considered in connection with the later decision of the House of Lords in *Jolly* v. *Kine, [1907] A. C. 1. Held,* further, that in *Colls Case, [1904] A. C. 179,* the legal test in such an action was formulated by Lord Davey as being that "the owner of the dominant tenement is entitled to the uninterrupted access through his ancient windows of a quantity of light, the measure of which is what is required for the ordinary purposes of inhabitancy or business of the tenement according to the ordinary notions of mankind, . . . The single question in these cases is still what it was in the days of Lord Hardwicke and Lord Eldon—whether the obstruction complained of is a nuisance," and the House of Lords in that case adopted that formulation of the law. In the judgment of the House of Lords in *Jolly* v. *Kine, [1907] A. C. 1,* there was an authoritative exposition of the decision in *Colls Case, [1904] A. C. 179,* and it was established that the law as stated by Lord Davey is the law as laid down by that decision, and that it accurately formulated the law on the subject. In the High Court, in the present case the Court of first instance adopted Lord Davey's opinion, and applied it consistently to the findings of fact to which he came; and the Appellate Court had substantially taken the same test. Their Lordships, therefore, affirmed the judgments of the Courts below, and dismissed the appeal. PAUL *v.* ROBSON (1914) . . **I. L. R. 42 Calc. 46**

2. ——— *Prescriptive right to take water by means of definite mode of access—Whether owner of servient tenement may substitute some other means of access.* When the owner of a dominant tenement has acquired a prescriptive right to take water from a tank on the servient tenement, and has for this purpose used a particular means of access for the statutory period, he has acquired a right to reach the water by means of such definite mode of access: the servient owner, at his own discretion, may not substitute for his use some other means of access. JIBANANDA CHAKRABARTY *v.* KALIDAS MALIK (1914) . . . . **I. L. R. 42 Calc. 164**

3. ——— *User of easement for less than the prescriptive period—No right to sue for infringement.* Incorporeal rights such as easements are not capable in an exact sense of being possessed; and unless an easement had ripened into a prescriptive one, mere enjoyment of the easement for any length of time short of the full period of prescription gives no right for the enjoyer to maintain an action against any person infringing such a user. Protection given in law to mere possession of corporeal things cannot be extended to such cases. *Acchanna* v. *Venkamma, 5 Mad. L. J. 24,* and *Kondapa Rajam Naidu* v. *Devarakonda Suryanarayana, I. L. R. 34 Mad. 173,* distinguished. English authorities reviewed. NARASAPPAYYA *v.* GANAPATHI RAO (1913)
I. L. R. 38 Mad. 280

EASEMENT—*contd.*

4. ——————— *Right to discharge water, not claimed as easement but as ancillary to ownership of land.* The plaintiffs were the owners of land on the south of that of the defendants, on a higher level, and the water falling on the land of the plaintiffs flowed on to the land of the defendants who built a bund on their land so as to obstruct the water accumulated on the plaintiffs' land from flowing towards the north through the defendants' land. The plaintiffs alleged that they were entitled to have the water on their land discharged through the defendants' land; but they did not claim it as an easement but as a right ancillary to their property which they had not parted with: *Held*, that there was such a right as that claimed by the plaintiffs, although the plaintiffs did not claim the right to discharge their water and did not in fact discharge their water on to the defendants' land by any definite channel. That the duty of the defendants was to allow the water from the plaintiffs' land to pass on through their land. It was then open to them to dispose of it in the way they thought best. RAMADHIN SINGH *v.* JADUNANDAN SINGH (1914) **19 C. W. N. 54**

5. ——————— *Right of way—Permanent tenures, held under same landlord—One, if may acquire right by prescription against the other—Prescription by tenant in possession inuring to owner's benefit—Grant implied upon severance, in cases of continuous easements—Continuous easement, right of way when—Permanent adaptation of tenement—Grant inferred from long user alone—Easement of necessity—Grant if may be presumed upon severance—Suit for declaration of right of easement—All servient owners, if necessary parties—Cause of action.* A dominant owner has no cause of action against servient owners who have neither caused obstruction nor raised any objection to the exercise of his right of easement. In a suit for a declaration of his right of way he is not bound to make parties any servient owners other than those who have so obstructed or challenged his right. *Madan Mohan Chattopadhya* v. *Akshoy Kumar Baruri, 14 C. W. N. 15*, explained. The enjoyment by the tenant in possession of the dominant tenement under a claim of right in respect of the dominant heritage may give the owner a prescriptive right. *Quære*: Whether the holder of a permanent tenure can acquire by prescription in respect of his tenure a right of easement against another permanent tenure held by another tenant under the same landlord. *Held*, however, upon the facts proved in the case which showed that the two tenements had at one time belonged to the same person, that the Court was justified in presuming an implied grant, and this notwithstanding that the right claimed was a right of way along a path which was a formed road though neither paved nor metalled, but which otherwise appear to have been intended to be permanently attached to and for the use of the dominant tenement. That assuming that the path came into existence after the severance, the fact that

EASEMENT—*concld.*

for about sixty years since, the tenant in possession of the dominant tenement had been using the path was sufficient to justify the Court in inferring that the user had its origin in a grant, not as a matter of legal presumption, but as an inference of fact. On a severance of property a grant by the owner of one of the severed portions to the owner of the other can be presumed, and where the easement appears to be one of absolute necessity, such a presumption legitimately arises in the case. MADAN MOHAN CHAKRAVARTY *v.* SASHI BHUSAN MUKERJI (1915) **19 C. W. N. 1211**

6. ——————— *Easement—Unknown to law—Right to use another's land as latrine, if may be acquired by prescription.* Where plaintiff alleged that he along with the defendants erected latrines on land which did not belong to them and used them for a long series of years and thus acquired a right of easement: *Held*, that an easement of this description was unknown to law and the Court will not create a new species of easement. HIRALAL RAY CHAUDHURI v. LOKENATH SAHA (1915) . . **19 C. W. N. 864**

EASEMENTS ACT (V OF 1882).

——————— **s. 7, ill. (1)**—

See WATERFLOW **I. L. R. 38 Mad. 149**

——————— **s. 15**—*Essentials for the acquisition of an easement—Adverse enjoyment in assertion of ownership can create a right of easement.* If a person walks along the land of another for the beneficial enjoyment of other land, and if the enjoyment of the other's land does not amount to exclusive possession, there is no reason why his walking along the land without the permission of the true owner and in the assertion of a right to walk should not create in favour of the enjoyer a prescriptive right of easement, simply because, he mistakenly supposes that he is the owner of the land or asserts that his act of enjoyment is sufficient to give him the ownership by prescription. The mere claim of the higher right of ownership would not prevent a person from acquiring the lesser right of easement provided he could show that he asserted certain rights of enjoyment over the land in question for the benefit of another land belonging to him. S. 15 of the Easements Act does not require that the *title* should be claimed as an easement, but only requires that the *enjoyment* should possess two properties, *viz.*, (i) that it must be as of right without interruption and (ii) that it must be as an easement. The first quality is intended to show that enjoyment by license or under a contract which would not amount to a grant of an easement, would be ineffectual to create a right by prescription. The other quality is that the enjoyment should be as an easement, and not that it should be in the assertion of a claim of an easement. *Narendra Nath Barari* v. *Abhoy Charan Chattopadhya, I. L. R. 34 Calc. 51*, referred to. *Chunilal Fulchand* v *Mangaldas Goverdhandas, I. L. R. 16 Bom. 592*, commented on. KONDA *v.* RAMASAMI (1912) . **I. L. R. 38 Mad. 1**

EASEMENTS ACT (V OF 1882)—*concld.*

———— **ss. 59, 60**—*License—Revocation—Rights of transferee of property in respect of which a license has been given. Held*, that the rule laid down by s. 59 of the Indian Easements Act, 1882, is not independent of that laid down by s. 60, and does not confer upon the transferee any higher rights than those possessed by the transferor. RAS BEHARI LAL *v.* AKHAI KUNWAR (1914) . . . . **I. L. R. 37 All. 91**

EDITOR OF A NEWSPAPER.

———— **duties of—**

See COMPANY. **I. L. R. 38 Mad. 991.**

EJECTMENT.

See HINDU LAW—HUSBAND AND WIFE **I. L. R. 38 Mad. 1036**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8 ETC. **I. L. R. 38 Mad. 608, 843**

———— **from "old waste" grounds—**

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 3 (7), 153 AND 157. **I. L. R. 38 Mad. 163**

———— **suit for—**

See FAZENDARI TENURE. **I. L. R. 39 Bom. 316**

See JURISDICTION. **I. L. R. 38 Mad. 795**

1. ———— *Non-transferable holding—Transfer—Ejectment by landlord—Limitation Act (IX of 1908), s. 18.* A landlord suing in ejectment a purchaser of a non-transferable holding cannot succeed unless he makes out a case under s. 18 of the Indian Limitation Act, where the purchase took place more than 12 years before the suit. *Probhabati Dassi* v. *Tiabatunnessa*, *17 C. W. N. 1088*, followed. PANCHKARI CHATTERJI *v.* MAHARAJ BAHADUR SING (1914) **19 C. W. N. 136**

2. ———— *Previous suit for compensation for use and occupation without prayer for ejectment, effect of—Acquiescence—Limitation.* That the effect of the plaintiff's predecessor bringing a suit for compensation for use and occupation without a prayer for ejectment was not a waiver of the right to eject and a recognition of the defendants as tenants. It is open to an owner of land first to sue a trespasser for compensation and then to bring a suit for ejectment to assert his right to the land. RAJ KRISHNA RUDRA *v.* PHAKIR DOME (1913) . . **19 C. W. N. 478**

ELECTION—

———— **of mahant of temple—**

See HINDU LAW—ENDOWMENT. **I. L. R. 37 All. 298**

ELECTRICITY ACT (IX OF 1910).

———— **ss. 14, 19**—*Responsibility of licensee to make full compensation for any damage, detriment or inconvenience caused by him or by anyone employed by him—Damage, whether caused in the exercise of the powers granted to the licensee.* A gas company laid a 3-inch main in a street in Bombay. Subsequently an electric supply company caused cables contained in troughing to be laid over this main in such a manner that the main for the distance of some 36 feet was rendered inaccessible for the purpose of removing the same except by slinging the electric company's cables, by reason of the position of the cables. It was found that the work of laying the cables had not been executed, nor must it be deemed to have been executed, to the reasonable satisfaction of the gas company. Subsequently the gas company desired to replace their 3-inch main with a 4-inch main and for this purpose opened up the street in question, when they discovered the position of the cables. On account of the position of these cables the gas company were compelled to make a diversion in the route taken by their 4-inch main and claimed that the electric supply company should pay the cost thereof; the latter company refused to do so. *Held*, that the damages, if any, suffered by the gas company were damages recoverable under s. 19 of the Indian Electricity Act of 1910 as the damage alleged lay in the gas company being deprived of access to its own property (the main) which was inflicted once and for all when the electric supply company laid their cables over the main, and that it was a question of fact whether such damage had been committed. *Held*, further, that the gas company were not compelled to proceed under s. 14 of the Act and did not lose their remedies against the electric supply company by reason of their not having availed themselves of the provisions of that section. *Quœre*: whether a licensee causing only as little damage, detriment and inconvenience as may be is liable for damages under s. 19 of the Indian Electricity Act (IX of 1910). *In re* BOMBAY GAS COMPANY, LTD. AND BOMBAY ELECTRIC SUPPLY AND TRAMWAYS COMPANY, LTD. (1914) **I. L. R. 39 Bom. 124**

ELECTRICITY ACT (IX OF 1910)—*concld.*

———— **s. 14**—*concld.*

EMBANKMENT ACT (BENG. II OF 1882).

See SALE FOR ARREARS OF REVENUE. **I. L. R. 42 Calc. 765**

EMBANKMENT CHARGES.

See SALE FOR ARREARS OF REVENUE. **I. L. R. 42 Calc. 765**

EMBARRASSMENT.

———— **of debtor—**

See INTEREST . **I. L. R. 42 Calc. 652**

ENCROACHMENT.

See MUNICIPAL COUNCIL. **I. L. R. 38 Mad. 6**

See MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884), S. 168. **I. L. R. 38 Mad. 456**

ENCROACHMENT—*concld.*

See PUBLIC NUISANCE.
I. L. R. 42 Calc. 702

ENDORSEMENT.

———— **of payments by mortgagor—**

See MORTGAGE BY MINOR.
I. L. R. 38 Mad. 1071

ENDOWMENT.

See HINDU LAW—ENDOWMENT.

ENEMY SHIP.

See CARGO . . **I. L. R. 42 Calc. 334**

ENGAGEMENTS.

———— **construction of—**

See MADRAS IRRIGATION CESS ACT (VII OF 1868), S. 1 **I. L. R. 38 Mad. 997**

ENGLISH LAW OF WATERS.

See FISHERY . **I. L. R. 42 Calc. 489**

ENJOYMENT.

———— **adverse—**

See EASEMENTS ACT (V OF 1882), S. 15.
I. L. R. 38 Mad. 1

EPIDEMIC DISEASES ACT (III OF 1897).

———— **ss. 2, 3—**

See PENAL CODE (ACT XLV OF 1860), SS. 188 AND 269.
I. L. R. 38 Mad. 602

EQUITABLE ASSIGNMENT.

See ADMINISTRATOR-GENERAL'S ACT (II OF 1874), SS. 28, 34 AND 35.
I. L. R. 38 Mad. 500

EQUITIES ON PARTITION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 60 AND 91.
I. L. R. 38 Mad. 310

EQUITY OF REDEMPTION.

See MORTGAGE **I. L. R. 39 Bom. 55**

———— **sold and pre-empted—**

See BUNDELKHAND ALIENATION ACT (II OF 1903), S. 3.
I. L. R. 37 All. 467

———— *Extinguishment—Mortgagor passing a rajinama to mortgagee for the land—Mortgagee executing kabuliyat to pay Government assessment.* In 1876, the plaintiff mortgaged the land in dispute to the defendants; and in 1879 passed a *rajinama* relinquishing all his occupancy rights in the said land in favour of the defendants. The latter at the same time gave a complementary *kabuliyat* agreeing to pay Government assessment on the land. The plaintiff having sued to redeem the mortgage. *Held*, dismissing the suit, that the *rajinama* and *kabuliyat* effectually extinguished the plaintiff's equity of redemption. VENKAJI NARAYAN *v.* GOPAL RAMCHANDRA (1914)
I. L. R. 39 Bom. 55

ESTATE.

See MADRAS ESTATES LAND ACT (I OF 1908) . . **I. L. R. 38 Mad. 33**

ESTATES LAND ACT (MAD. I OF 1908).

———— **s. 111 et seq.**—*Sale of holding under—Suit for declaration of its invalidity—Cognisable in a Civil Court.* A suit for a declaration that the sale of a holding under s. 111 *et seq.* of the Madras Estates Land Act was void in consequence of the landholder's failure to supply for sale within forty-five days as prescribed by s. 115 of the Act is maintainable in a Civil Court. *Gouse Mohideen Sahib* v. *Muthialu Chettiar*, *(1914) Mad. W. N. 55*, followed. *Dorasamy Pillai* v. *Muthusamy Mooppan*, *I. L. R. 27 Mad. 94*, and *Zemindar of Ettayapuram* v. *Sankarappa Reddiar*, *I. L. R. 27 Mad. 483*, referred to. S. 189 of the Act commented on. CHIDAMBARAM PILLAI *v.* MUTHAMMAL (1914)
I. L. R. 38 Mad. 1042

ESTATES PARTITION ACT (BENG. V OF 1897).

———— **ss. 119, 88**—*Suit against order of Revenue Court, when lies.* On the application of defendant, a co-sharer, for the partition of his share in a *tauzi* proceedings under the Estates Partition Act were taken. Throughout the proceedings no question was raised under s. 88 and no order was passed under that section. The plaintiff, another co-sharer, objected only to the mode in which the common lands were divided but never took the objection that more land was allotted to the estate under partition than that estate was entitled to. The plaintiff's objection was rejected by all the revenue authorities up to the Board of Revenue and the final order for partition was made. The plaintiff then brought a suit for declaration of title to and possession of certain land alleging that by reason of fraud practised by one of the defendants in connection with the preparation of the record-of-rights on which the partition proceedings were based, land belonging exclusively to him had been partitioned as joint land: *Held*, that under s. 119 of the Estates Partition Act the plaintiffs not being persons aggrieved by an order under s. 88 had no right of suit in the Civil Court. FLETCHER, *J.*—That the plaintiff could not be allowed to recover land allotted to defendant, whilst retaining lands allotted to him by the same partition. RICHARDSON, *J.*—Where there is no dispute as to the *quantum* of interest each co-sharer has in joint lands but the question is as to whether a particular piece of land is part of the joint lands or is the exclusive property of a co-sharer, the question is not one under proviso (i) to s. 119 of the Act. GURBUKSH PROSHAD TEWARI *v.* KALI PROSAD NARAIN SINGH (1914)
19 C. W. N. 1322

ESTOPPEL.

See BENAMI TRANSACTION.
I. L. R. 37 All. 557

See BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876), SS. 30, 35, 39, 40.
I. L. R. 39 Bom. 664

ESTOPPEL—*concld.*

See LIMITATION **I. L. R. 38 Mad. 374**

See TRADE MARK. **I. L. R. 42 Calc. 262**

ESTOPPEL BY CONDUCT.

——— **after attaining majority—**

See COMPANY . **I. L. R. 39 Bom. 331**

EVIDENCE.

See CRIMINAL CASE. **I. L. R. 42 Calc. 374**

See CRIMINAL PROCEDURE CODE, S. 107 **I. L. R. 37 All. 33**

See CRIMINAL PROCEDURE CODE, SS. 107 AND 117 . **I. L. R. 37 All. 30**

See DISPUTE CONCERNING LAND. **I. L. R. 42 Calc. 381**

See EVIDENCE ACT (I OF 1872).

See EXTRINSIC EVIDENCE.

See HINDU LAW—RELIGIOUS ENDOWMENT . . **I. L. R. 42 Calc. 536**

See PRE-EMPTION **I. L. R. 37 All. 524**

See PUBLIC PROSECUTOR, DUTY OF. **I. L. R. 42 Calc. 422**

See RECEIPT . **I. L. R. 42 Calc. 546**

——— **additional, on appeal—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 27. **I. L. R. 38 Mad. 414**

——— **nature of—**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 91 . **I. L. R. 38 Mad. 321.**

——— **of intention—**

See HINDU LAW—ALIENATION. **I. L. R. 37 All. 369**

——— **where witness not sworn—**

See OATHS ACT (III OF 1873), SS. 5, 13. **I. L. R. 38 Mad. 550**

1. ——— *Admissibility of evidence—Birth-day books, entries in, if admissible to prove age—Husband's evidence as to wife's age, admissibility and value of—Affidavit by husband, before question litigated, as to wife's age how far admissible.* Where the evidence showed a practice to make entries of dates of births in books kept for the purpose of obtaining the opinion of astrologers as to good or ill fortune: *Held* that under the Straits Settlements Ordinance No. 3 of 1893, the provisions of which in this respect are identical with those of the Indian Evidence Act, the birth-day books were admissible to prove the dates of birth if the parol evidence concerning them were accepted. A husband's evidence as to his wife's age, which was obviously in the nature of hearsay, being admissible for what it was worth, an affidavit sworn by him on a previous date which showed that he had sworn to the same date before the question arose was for that purpose admissible in evidence. CHUAH HOOI GNOH NEOH *v.* KHAW SIM BEE (1915) . . **19 C. W. N. 787**

2. ——— *Disbelief of greater part of the evidence of the prosecution witnesses—Conviction on the residue—Propriety of the conviction—Practice.* When the prosecution witnesses are found to be untruthful as to the greater part of their evidence, it would be dangerous to convict the accused on the residue without corroboration. HARI KRISHNA *v.* EMPEROR (1914) **I. L. R. 42 Calc. 784**

3. ——— *Evidence taken by a Court without jurisdiction—Effect of consent to treat it as evidence, if relevant.* Consent or want of objection to the reception of evidence which is irrelevant cannot make the evidence relevant, but consent or want of objection to the wrong manner in which relevant evidence should be brought on record of the suit disentitles parties from objecting to such evidence in a Court of Appeal. *Miller* v. *Madho Dass, I. L. R. 19 All. 76, 92,* followed. The fact that it was evidence taken previously by a Court which was held to have had no jurisdiction to try the case and take the evidence and that it was consented to be treated as evidence does not affect the validity of the consent. *Quære*: Whether in a case falling under s. 33 of the Evidence Act, evidence recorded by a Court can be regarded as not given in a judicial proceeding on the mere ground that the decree of the Court was subsequently set aside for defect of jurisdiction. SRI RAJAH PRAKASARAYANIM GARU *v.* VENKATA RAO (1912) . . . **I. L. R. 38 Mad. 160**

EVIDENCE ACT (I OF 1872).

——— **ss. 9, 11**—*Omission of entry of payment in account book, if relevant.* The absence of an entry of payment in an account book is a relevant fact not under s. 34 but under ss. 9 and 11 of the Indian Evidence Act. GANGARAM AGARWALLA *v.* LACHIRAM KISHEN DYAL (1914) **19 C. W. N. 611**

——— **ss. 10, 14, 15, 54, 135, 143, 154—**

See CHARGE . **I. L. R. 42 Calc. 957**

——— **s. 13**—*Evidence—Admissibility of document affecting the right of a person, who is no party to it, against such person.* The plaintiff sued for a five annas share in the *maliki* right in a certain land. His case was that his mother's father owned a ten annas share, half of which he gave to the plaintiff and the other half to the plaintiff's mother. The contesting defendant who was the brother of the plaintiff's grandfather contended that he and his brother owned the ten annas in equal shares and the effect of the gift to the plaintiff was to convey only two annas and a half, although it purported to convey more. The lower Appellate Court gave effect to this contention relying on two documents, one executed by the plaintiff's mother, acting through his father in favour of the contesting defendant in which it was

EVIDENCE ACT (I OF 1872)—*contd.*

s. 13—*concld.*

recited that the gift of ten annas by the plaintiff's grandfather was a mistake and that he was entitled to deal, and intended to deal, with five annas only and the other a *patta* executed by the plaintiff's mother and father in which they stated that a five annas share in the property belonged to the contesting defendant. *Held*, that, both the documents were inadmissible in evidence against the plaintiff who was a stranger to them. That the ruling as to the admissibility of the documents in *Dwarka Nath* v. *Mukundalal*, *5 C. L. J. 55*, is *obiter*. ABDUL ALI *v.* SYED REJAN ALI (1913)

19 C. W. N. 468

s. 30—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 235 AND 342.

I. L. R. 38 Mad. 302.

Evidence—Confession—Admissibility of, in evidence against co-accused—Joint trial. One out of several accused persons who were being tried jointly for an offence under s. 193 of the Indian Penal Code pleaded guilty and made a statement implicating himself and other accused. The Magistrate, however, did not convict him merely upon his plea of guilty, but upon the evidence and upon the statement made by him. The Magistrate also took the confession of this accused into consideration as against the others. *Held*, that the course taken by the Magistrate was not only admissible, but that in the circumstances of the case the Magistrate would not have exercised a sound discretion in convicting the confessing accused at once on the strength of his own statement alone. EMPEROR *v.* DIP NARAIN (1915)

I. L. R. 37 All. 247

s. 32—*Statement of relationship by deceased person, admissibility of.* The plaintiff brought a suit on two hand-notes executed by the defendant. The defence was that the defendant was a minor when he took the loans. Besides adducing oral evidence as to the age of the defendant, the plaintiff put in the record of a case under Act VIII of 1890, which contained a petition by the defendant's aunt, since deceased, for her appointment as guardian of the defendant. This petition contained a statement by the aunt as to the date of the defendant's birth. The lower Appellate Court held that this statement was admissible in evidence. The High Court in appeal reversed the decision. *Held* (on review of judgment), that the statement was admissible in evidence under s. 32, cl. (*5*) of the Evidence Act. *Ram Chandra Dutt* v. *Jogeswar Narain Deo*, *I. L. R. 20 Calc. 758*, followed. RAM KISHORE SADKHAN *v.* MANINDRA MOHAN RAY (1915)

19 C. W. N. 646

s. 32 (*5*) and (*6*)—

See HINDU LAW—MINOR.

I. L. R. 38 Mad. 166

s. 32, cl. (*6*)— *Evidence—Pedigree.* A document, ancient and genuine, purporting to be a family pedigree, was produced in evidence in a mutation case by one Jiraj. The record was brought before the civil Court in a suit in which the plaintiff's relationship to one Hulas, the last male owner of certain property, was in question. Jiraj stated that he had received the pedigree from his grandfather. It was not proved who had prepared the pedigree. *Held*, that it was not necessary to show who had made the statements mentioned in the pedigree and that it was admissible in evidence under s. 32, cl. (*6*), of the Evidence Act. JAHANGIR *v.* SHEORAJ SINGH (1915)

I. L. R. 37 All. 600

ss. 35 and 82—

See HINDU LAW—MINOR.

I. L. R. 38 Mad. 166

ss. 35 and 83— *Chitta prepared by Government for resuming surplus lands acquired for roadway, if public document—Admissibility as private document.* Where it was argued that *chittas* prepared by Government for the purpose of resuming surplus lands acquired for the purpose of a roadway in the possession of persons without title were not admissible in evidence as public documents, *Held*, that the *chittas* were admissible as part and as explanatory of the resumption proceedings which were regularly taken, and together with the petition upon which the proceedings were initiated, the reports of the Collector and the orders of the Board of Revenue furnished valuable evidence that Government recognised the right of one of the parties to hold the land described in the *chittas* as rent-free. *Ram Chandra Sao* v. *Bunseedhur Naik*, *I. L. R. 9 Calc. 741*, referred to. Entries in a public register kept in the Survey. Office for the public benefit and under the sanction of official duty are relevant under s. 35 of the Evidence Act, irrespective of whether the clerk who actually wrote the entries had any personal knowledge or whether the register was a copy of a previous register which had become untidy. GRAHAM *v.* PHANINDRA NATH MITRA (1915)

19 C. W. N. 1038

s. 52—

See SPECIFIC RELIEF ACT (I OF 1877) s. 39 . . **I. L. R. 39 Bom. 149**

ss. 54, 165—

See PRACTICE . **I. L. R. 39 Bom. 326**

ss. 74, 66—*Order of Probate Court granting letters of administration with copy of will annexed, if public document—Certified copy, if admissible—Admission as secondary evidence, though no steps taken to call for production of original.* The certified copy of an order of the Probate Court to the effect that letters of administration be granted to the person named with a copy of the will annexed of the deceased testator is admissible, the latter being a public document within the meaning of s. 74 of the Indian Evidence Act Where it appeared that the original letters were in

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 74—*concld.*

the possession of parties interested in opposing the plaintiff's claim, but the plaintiff did not take steps to call upon them to produce them: *Held*, that there being no question of the genuineness of the document, these steps should have been waived by the Court and the document admitted in evidence under s. 66 of the Evidence Act. HABIRAM DAS *v.* HEM NATH SARMA (1915) **19 C. W. N. 1068**

——— s. 92—

See RECEIPT . **I. L. R. 42 Calc. 546**

——— *Registered sale-deed—Price specified in the sale-deed—Recital as to amount of price, essential term of contract of sale—Oral agreement as to higher price in discharge of a mortgage—Evidence inadmissible.* The amount of the price agreed to be paid is an essential term of a contract of sale; and consequently no evidence of an oral agreement at variance with the provisions of a registered sale-deed as to the amount of the price fixed for the sale is admissible under s. 92 of the Indian Evidence Act. *Cowasji Ruttonji Limboowalla* v. *Burjoji Rustomji Limboowalla, I. L. R. 12 Bom. 335*, followed. *Vasudeva* v. *Narasamma, I. L. R. 5 Mad. 6, Kumara* v. *Srinivasa, I. L. R. 11 Mad. 213, Hukumchand* v. *Hiralal, I. L. R. 3 Bom. 159*, and *Gopal Singh* v. *Laloo Lall, 10 C. L. J. 27*, explained. *Ram Baksh* v. *Durjan, I. L. R. 9 All. 392, Indarjit* v. *Lal Chand, I. L. R. 18 All. 168, Balkishen Das* v. *Legge, I. L. R. 22 All. 149, Selamba Goundan* v. *Palani Goundan, (1913) Mad. W. N. 650*, and *Probat Chandra Gangapadhya* v. *Chirag Ali, I. L. R. 33 Calc. 607*, referred to. ADITYAM IYER *v.* RAMA KRISHNA IYER (1913) . **I. L. R. 38 Mad. 514**

——— s. 92, provs. 1 and 3—

——— *Sale-deed—Property, vesting of—Oral evidence contrary to its tenor, admissibility of—Document operative at once—Evidence as to vesting of property at a future time, inadmissible—Rule of English Law, different.* An executant of an instrument (which was not a sham transaction but intended to operate at once), cannot be permitted to set up or prove that the instrument, which according to its tenor vested the property in the grantee at once, was in reality intended to vest it only at a future time or after the death of the executant. S. 92, proviso 1, of the Indian Evidence Act, has no application to a case where the instrument represents what the parties intended to put down in writing, though it might not be in accordance with what they intended to do and with the legal effect that they secretly wanted to bring about but which for some reason they did not want to put in writing. The rule of English Courts of Equity permitting evidence to be given to show that a document was intended to operate in a manner different from the plaint and apparent meaning of its language cannot be followed in India, as it is contrary to the provisions of s. 92 of the Indian Evidence Act. *Balkishen Das* v. *Legge, I. L. R. 22 All. 149, Achutaramaraju* v. *Subbaraju, I. L. R. 25 Mad. 7, Dattoo* v. *Ramachandra, I. L. R. 30 Bom. 119*, and *Challa Venkatta Reddy* v. *Devabhaktuni Mruthunjayadu, (1912) Mad. W. N. 164*, followed. *Jibun Nissa* v. *Asgar Ali, I. L. R. 17 Calc. 937*, referred to. *Chaudhri Mehdi Hasan* v. *Muhammad Hassan, I. L. R. 28 All. 439, Ramalinga Mudali* v. *Ayyadorai Nainar, I. L. R. 28 Mad. 124*, and *Amirthathammal* v. *Periasami Pillai, I. L. R. 32 Mad. 325*, distinguished. MOTTAYAPPAN *v.* PALANI GOUNDAN (1913) . **I. L. R. 38 Mad. 226**

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 92—*contd.*

——— s. 92 and prov. 2—

——— *Suit on promissory note—Plea of an oral agreement purporting to vary note—Admission in pleadings—Admission subject to condition—Absence of substantive proof of oral agreement—Onus of proof.* Although there are cases where it is allowable to urge an oral agreement which would have the effect of leaving matters otherwise than if they had depended on the written agreement alone, the oral agreement must be clearly proved, and the onus of doing so is on him who sets it up. In a suit on a promissory note dated 23rd December 1907, executed by the defendant (appellant) and a firm of H. C. and payable on demand, the defendant pleaded that by an oral agreement between the parties his liability on the note was to cease on 30th January 1908, a simple acknowledgment by H. C. being then substituted for the note. The plaintiff stated in his plaint that the defendant's liability was only to come to an end at the date named provided he had then received full security for advances he had made to H. C. which were only partially secured. The parties went to trial and were allowed to give evidence, on which the Trial Judge in the High Court taking it as admitted that the defendant's liability ceased on 30th January 1908, and not accepting as proved the allegation of the plaintiff as to further security, decided in favour of the defendant, and dismissed the suit. The Appellate Court reversed that decision holding that evidence of the oral agreement was inadmissible under s. 92 of the Evidence Act (I of 1872). *Held*, by the Judicial Committee, that a mere amendment of the pleadings would have brought the defendant's contention within proviso (2) of s. 92, as being an oral agreement as to which the promissory note was silent, and which was not inconsistent with its terms. In that view their Lordships were of opinion that it would not be satisfactory to decide against the defendant without considering the evidence, and they held that the failure of the plaintiff to prove his version of the transaction did not necessarily (as held by the Trial Judge) imply that the defendant's case was thereupon established. The agreement alleged by the defendant must be substantively proved, and that had not been done. It was permissible for a tribunal to accept part, and reject the rest of a witness's testimony; but an admission in pleading cannot

EVIDENCE ACT (I OF 1872)—*contd.*

——— — **s. 92**—*concld.*

be so treated, and if it be made subject to a condition it must either be accepted with the condition, attached, or not accepted at all. An admission, therefore, that the note was to be held as satisfied on 30th January 1908 by a new debt on the part of H. C., provided that full security was found for the whole debt by that date, could not be treated as an admission that in any case the promissory note was to be held as satisfied by 30th January. MOTABHOY MULLA ESSABHOY *v.* MULJI HARIDAS (1915) . **I. L. R. 39 Bom. 399**

——— **ss. 106 and 114, ill. (*g*)—**

See MADRAS REGULATION (XXV OF 1802), S. 4 . . **I. L. R. 38 Mad. 620**

——— **s. 116—**

See BENAMI TRANSACTION.
I. L. R. 37 All. 557

——— **s. 117—**

See TRADE-MARK.
I. L. R. 42 Calc. 262

——— **ss. 143, 154—**

See CROSS-EXAMINATION.
I. L. R. 42 Calc. 957

——— **s. 145—**

See HINDU LAW—ADOPTION.
I. L. R. 39 Bom. 441

See HINDU LAW—MINOR.
I. L. R. 38 Mad. 166

——— **ss. 145, 33**—*Depositions of witnesses in a criminal trial, use of, in supporting or contradicting them in a subsequent civil suit—Irregularity in procedure.* In the absence of proof of circumstances specified in s. 33 of the Evidence Act the importing in bulk in a civil suit of depositions of witnesses recorded in a criminal trial was a serious irregularity. The depositions could not in such circumstances be used even to support the evidence the witnesses gave in the civil suit. Where they were used to contradict the witnesses, but without giving them opportunity to tender their explanation or to clear up the particular points of ambiguity or dispute: *Held*, that the procedure was contrary to general principles and to the specific provisions of s. 145 of the Evidence Act. *Valubai* v. *Govind Kashinath, I. L. R. 24 Bom. 218, 221*, approved. BAL GANGADHAR TILAK *v.* SHRINIWAS PANDIT (1915) . . . **19 C. W. N. 729**

——— **s. 157—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 162.
I. L. R. 39 Bom. 58

——— **s. 167**—*Application in second appeal, when finding of fact arrived at, in part, on inadmissible evidence.* Where in a suit on a bond, plaintiff sought to save the bar of limitation by proving payment of interest by the defendant at Faridpur

EVIDENCE ACT (I OF 1872)—*concld.*

——— **s. 167**—*concld.*

on a date on which the defendant averred he was at Pegu, and which plea the latter sought to establish by producing a certificate which he swore he had received from the hands of the manager of the Pegu Club; and the District Judge found first that the plaintiff's evidence in support of his case was "discrepant" and "not satisfactory" and went on to hold that there was sufficient proof of the certificate,—and in this view dismissed the suit. *Held*, that the certificate being inadmissible in evidence and it being impossible for the High Court to say how far the lower Appellate Court was influenced in its decision by it, there ought to be a retrial. GOMEZ *v.* IDOO MIAN (1914) . . . **19 C. W. N. 1148**

EXCHANGE OF LANDS.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 118, 119, 120, 54 AND 55, CL. 6 (*b*) . **I. L. R. 38 Mad. 519**

EXCISE INSPECTOR.

See PENAL CODE ACT (XLV OF 1860), SS. 332, 323 . **I. L. R. 37 All. 353**

EXCLUSION OF FEMALES.

See HINDU LAW—INHERITANCE.
I. L. R. 42 Calc. 1179

EXECUTANT.

——— **personal liability of—**

See NEGOTIABLE INSTRUMENTS ACT (XVI OF 1881), S. 28.
I. L. R. 38 Mad. 482

EXECUTION.

See EXECUTION OF DECREE.

See EXECUTION, STAY OF.

——— *Civil Procedure Code (Act V of 1908), s. 141, O. II, r. 2—Non-applicability of, to execution applications—consolidating statute, construction of.* The dismissal of a suit on the ground that no suit would lie to recover mesne profits subsequent to the date of a previous decree which awarded subsequent mesne profits is no bar to a claim thereto in execution of that decree. The fact that a decree-holder made a previous application for execution to recover mesne profits only for three years subsequent to the plaint and not for a further period also is not a bar under O. II, r. 2, Civil Procedure Code, or s. 141, Civil Procedure Code, as now enacted, to another execution application for recovery of mesne profits for the further period. *Thakur Prasad* v. *Fakir-ullah, I. L. R. 17 All. 106, s.c. 22 I. A. 44*, followed. *Safdar Ali* v. *Kishen Lal, 12 C. L. J. 6*, not followed. There is nothing in the Code of Civil Procedure to prevent a decree-holder from presenting successive applications for realising different portions of his decree. When the words of a consolidating statute are clear their effect cannot be cut down by a comparison with the language of earlier statutes. S. 141, Civil Procedure Code, is intended to apply to proceed-

EXECUTION—*concld.*

ings in Civil Courts such as probate, etc. BALASUBRAHMANYA CHETTI *v.* SWARNAMMAL (1913) **I. L. R. 38 Mad. 199**

EXECUTION APPLICATION.

See EXECUTION.

I. L. R. 38 Mad. 199

EXECUTION OF DECREE.

See AGRA TENANCY ACT (II OF 1901), S. 20, CL. (2) . **I. L. R. 37 All. 278**

See ASSIGNEE OF A MONEY-DECREE. **I. L. R. 38 Mad. 36**

See CIVIL PROCEDURE CODE (1882). **I. L. R. 37 All. 542**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 48 **I. L. R. 39 Bom. 256**

See CIVIL PROCEDURE CODE (1908) SS. 68 AND 70, SCH. III. **I. L. R. 37 All. 334**

See CIVIL PROCEDURE CODE (1908), S. 73; O. XXXVIII, RR. 5, 8 AND 10; O. XXI, RR. 52 AND 63. **I. L. R. 37 All. 575**

See CIVIL PROCEDURE CODE (1908), O. XXI, R. 89 . **I. L. R. 37 All. 591**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3. **I. L. R. 38 Mad. 959**

See CIVIL PROCEDURE CODE (1908), O. XLV, R. 15. **I. L. R. 37 All. 567**

See CIVIL PROCEDURE CODE (1908), O. XLV, RR. 15 AND 16. **I. L. R. 38 Mad. 832**

See DECREE . **I. L. R. 39 Bom. 80**

See HINDU LAW—JOINT FAMILY. **I. L. R. 37 All. 214**

See HINDU LAW—SUCCESSION. **I. L. R. 37 All. 545**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179 **I. L. R. 39 Bom. 20**

See MALABAR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900), SS. 3 AND 5. **I. L. R. 38 Mad. 954**

See RES JUDICATA. **I. L. R. 37 All. 589**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 89 **I. L. R. 37 All. 414**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 99 . **I. L. R. 37 All. 165**

——— **application for—**

See EXECUTION PROCEEDINGS. **I. L. R. 37 All. 518**

——— **Baroda-Court decree—**

See DECREE . **I. L. R. 39 Bom. 34**

EXECUTION OF DECREE—*contd.*

——— **deed of conveyance, obtained in—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, R. 2. **I. L. R. 38 Mad. 698**

1. ——— *Shebait—Claim preferred by successor in office of judgment-debtor (adverse to his own interests) as the legal representative—Order made, whether under scope of Civil Procedure Code (Act V of 1908), s. 47, or O. XXI, rr. 58, 60—Appeal therefrom, competency of—Civil Procedure Code (Act V of 1908), s. 2, sub-s. (2), ss. 96, 104; O. XLIII, r. 1.* Where *X* in execution of a decree for money against *Y* as shebait of a deity attached and proceeded to sell properties of which *Y* or his successor in office had alleged that he was in possession, not as shebait of the deity, but in his own right: *Held*, that the case did not fall within the scope of s. 47 of the Civil Procedure Code of 1908 as *Y* in his character of shebait, the only character in which he was a party to the suit, could not rightly be deemed the same person in his character as a private individual. *Kartick Chandra Ghose* v. *Ashutosh Dhara, I. L. R. 39 Calc. 298*, followed. That the order of the original Court must be taken to have been made under r. 60 of O. XXI, which recognised a broad distinction between the representative character and the personal character of the same individual: and that, in consequence, the appeal to the Subordinate Judge was incompetent. *Punchanun* v. *Rabia Bibi, I. L. R. 17 Calc. 711*, distinguished and explained. *Per* MOOKERJEE *J.* When *X* in execution of a decree for money against *Y* seeks to proceed against *Z* as the legal representative of *Y* who is liable only to the extent of the assets of *Y* in his hands, and a question arises whether a particular property does, or does not, constitute such assets, it must be determined by the execution Court under s. 47 of the Code. *Per* BEACHCROFT *J.* If the claim of the objector is really in his own interests as representative of the judgment-debtor, the case will come under s. 244 (of the Code of 1882); if the claim is adverse to his interest as representative, it will not. UPENDRA NATH KALAMURI *v.* KUSUM KUMARI DASI (1914) **I. L. R. 42 Calc. 440**

2. ——— *Attachment of undivided share in house—Conditional decree for partition pending attachment—Purchase of judgment-debtor's share by decree-holder not entitled to benefit of decree for partition.* A decree-holder attached in execution of his decree his judgment-debtor's undivided share in a house. Pending the attachment the judgment-debtor sued for partition of the house and obtained a decree for separate possession of her share conditional on payment of Rs. 237 into Court. The decree-holder then brought to sale the share allotted to his judgment-debtor, and, having paid into Court the Rs. 237 which the judgment-debtor had omitted to pay, asked for delivery of possession of the specific share purchased. *Held*, that, whether or not the decree-holder might ultimately be entitled to the

EXECUTION OF DECREE—*concld.*

full benefit of the decree for partition in favour of his judgment-debtor on payment of the sum of Rs. 237, all he acquired by his purchase was a right to be put into possession of the undivided share to which his judgment-debtor was entitled. RAM DULARI *v.* BALAK RANI (1914)

I. L. R. 37 All. 120

3. ——— *Construction of decree—Decree for maintenance based on an arbitration award.* A decree was passed by the High Court in a second appeal from the decree of a Court of Revenue in terms of an arbitration award to the following effect. Possession of the land claimed was to be given to the plaintiffs, who were to pay to the defendant half-yearly a maintenance allowance, partly in grain and partly in cash. It was provided further that if the maintenance allowance was not paid, the defendant should enforce payment by taking proceedings in a competent Court. *Held,* on a construction of the decree, that it was not merely declaratory of the defendant's right to receive maintenance and could be executed by a Court of Revenue, but that the defendant should bring a regular suit in a Civil Court to enforce her right to maintenance. ANUPA KUNWAR *v.* ACHHAIBAR SINGH (1914)

I. L. R. 37 All. 97

4. ——— *Limitation—Limitation Act (IX of 1908), Art. 182, Sch. I—Application in accordance with law—Civil Procedure Code (1908), O. XXI, r. 12.* The failure of a decree-holder to annex to an application for attachment of immovable property in execution of a decree an inventory of the property to be attached with a reasonably accurate description of the same, as required by O. XXI, r. 12, of the Civil Procedure Code, is not an application in accordance with law within the meaning of Art. 182 of the first schedule to the Indian Limitation Act of 1908. *Hira Lal* v. *Dulari Kuar, All. Weekly Notes (1903), 3, Mangal Sen* v. *Baldeo Prasad, All. Weekly Notes (1892), 70,* followed. ABDUL RAFI KHAN *v.* MAULA BAKSH (1915)

I. L. R. 37 All. 527

5. ——— *Plea of adjustment—Previous adjudication.* Upon an application being made for the execution of a decree, a compromise was entered into between the decree-holder and the respondents by which the latter were exempted from liability for costs. The assignee of the decree-holder applied for execution against the respondents. The respondents objected and their objections were upheld by the High Court. Notwithstanding this the decree was again put into execution against the respondents who again objected but allowed their objection to be dismissed for default. *Held,* that the dismissal of the objection for default must be taken to be adjudication that the decree had not been adjusted, and that the later decision neutralised the earlier one and the respondents were consequently liable for the balance of the decretal amount. DAMBAR SINGH *v.* MUNAWAR ALI KHAN (1915)

I. L. R. 37 All. 531

EXECUTION PROCEEDINGS.

——— *Application for execution was struck off and file sent to record room—Second application for revival of the first—Limitation.* An application for execution was made on the 1st of December, 1908, for sale of certain property. The case was sent to the Collector for execution. The Collector discovered that part of the property sought to be sold belonged to persons other than the judgment-debtor and he sent the case back to the Subordinate Judge for orders. The Subordinate Judge called upon the pleader for the decree-holders to make a statement. No statement having been made the application was struck off and the file was sent to the record-room. The present application for execution was made on the 20th of December, 1913. *Held,* that it was an application to revive the execution proceedings which had been suspended and not dismissed, and that it was therefore not barred by limitation. YAKUB ALI *v.* DURGA PRASAD (1915)

I. L. R. 37 All. 518

EXECUTION SALE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.

I. L. R. 38 Mad. 1076

See LIMITATION ACT (IX OF 1908), S. 22.

I. L. R. 38 Mad. 837

EXECUTION, STAY OF.

——— *Order of, by Appellate Court—No communication to lower Court, effect of—When order takes effect.* An order of an Appellate Court staying further proceedings in the lower Court, such as holding a sale, etc., takes effect from the time it is pronounced and not from the time it is officially communicated to the lower Court and a sale held contrary to such an order whether with or without knowledge of it is liable to be set aside as having been held without jurisdiction. *Per* SPENCER, *J.*—The lower Court should have postponed the sale when having itself had no official information of the order of the Appellate Court it was moved by the party on the ground of such an order. *Per* SADASIVA AYYAR, *J.*—The sale under such circumstances is so gravely irregular that it must be set aside even without proof of injury. *Muthukumarasami Rowther Minda Nayinar* v. *Kuppusami Aiyangar, I. L. R. 33 Mad. 74,* dissented from by SADASIVA AYYAR, *J.*, and distinguished by SPENCER, *J. Hem Chandra Kar* v. *Mathura Santhal, 16 C. W. N. 1031,* and *Sati Nath Sikdar* v. *Ratanmani Nasker, 15 C. L. J. 335,* followed. RAMANATHAN *v.* ARUNACHELLAM (1913) **I. L. R. 38 Mad. 766**

EXECUTOR.

——— **assent of—**

See SUCCESSION ACT (X OF 1865), S. 187.

I. L. R. 38 Mad. 474

——— **conveyance by—**

See VENDOR AND PURCHASER.

I. L. R. 42 Calc. 56

EXECUTOR—*concld.*

——— liability of—

See INCOME TAX **I. L. R. 42 Calc. 151**

——— not brought on the record—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 164 AND 181 **I. L. R. 38 Mad. 442**

EX PARTE DECREE.

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13 . **I. L. R. 37 All. 208**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 164 AND 181. **I. L. R. 38 Mad. 442**

See RES JUDICATA. **I. L. R. 37 All. 484**

See SUMMONS . **I. L. R. 42 Calc. 67**

EXPLOSIVE SUBSTANCE.

——— The term "explosive substance" as used in s. 4 (*b*) of Act VI of 1908 includes *any part* of an apparatus, machine, or implement intended to be used or adapted for causing or aiding in causing any explosive substance, and "by means thereof" does not mean by means thereof *alone*. *R.* v. *Charles, 17 Cox. 499*, referred to. AMRITA LAL HAZRA *v.* EMPEROR (1915) . . . **I. L. R. 42 Calc. 957**

EXPLOSIVE SUBSTANCES ACT (VI OF 1908)

——— s. 4 (b)—

See CHARGE . **I. L. R. 42 Calc. 957**

EXPORTATION.

See TRADING WITH THE ENEMY. **I. L. R. 42 Calc. 1094**

EXPROPRIETARY TENANT.

See ADVERSE POSSESSION. **I. L. R. 37 All. 22**

EXTRADITION ACT (XV OF 1903).

——— ss. 7, 15—

See EXTRADITION WARRANT. **I. L. R. 42 Calc. 793**

EXTRADITION WARRANT.

——— by Resident in Nepal—

See REVISION . . **I. L. R. 42 Calc. 793**

EXTRINSIC EVIDENCE.

——— admissibility of—

See HINDU LAW—ADOPTION. **I. L. R. 38 Mad. 1105**

EX-TRUSTEE.

——— suit by an, for reimbursement—

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 120 . **I. L. R. 38 Mad. 260**

EYE-WITNESSES.

See PUBLIC PROSECUTOR, DUTY OF. **I. L. R. 42 Calc. 422**

F

FALSE COMPLAINT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195. **I. L. R. 38 Mad. 1044**

See FALSE AND VEXATIOUS COMPLAINT.

FALSE AND VEXATIOUS COMPLAINT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 250 AND 423. **I. L. R. 38 Mad. 1091**

FAMILY SETTLEMENT.

See CONTRACT **I. L. R. 38 Mad. 788**

FATHER.

See HINDU LAW—MORTGAGE. **I. L. R. 42 Calc. 1068**

——— contract to sell by—

See HINDU LAW—ALIENATION. **I. L. R. 38 Mad. 1187**

FAZENDARI TENURE.

——— *Sub-lease by a Fazendar.* The plaintiff, claiming under the original Fazendar, sublet certain land to the defendant's predecessor. The agreement, after reciting (*inter alia*) that the sub-tenant took the land on Fazendari tenure, continued:—"I shall live there till the Wadi remains in your possession. If the Wadi ceases to be in your possession, and if the land be required, you are to pay me the valuation of the said house whatever the same may come to:" *Held*, on the facts, that, on the true construction of the lease, the plaintiff was not entitled to eject the defendants. The meaning of the word 'Fazendari,' when it occurs in a written document embodying the contract between the parties, considered, and the remarks of Farran J. in *Parmanandas Jivandas* v. *Ardeshir Framji, I. L. R. 39 Bom. 320* note, approved. YESHWANT VISHNU *v.* KESHAVRAO BHAIJI (1914) **I. L. R. 39 Bom. 316**

FEMALES.

——— exclusion of—

See DARBHANGA RAJ. **I. L. R. 42 Calc. 582**

FINDING OF FACT.

See APPELLATE COURT. **I. L. R. 39 Bom. 386**

See PRE-EMPTION. **I. L. R. 37 All. 524**

See REMAND . **I. L. R. 42 Calc. 888**

See SPECIFIC RELIEF ACT (I OF 1877), S. 39 . . **I. L. R. 39 Bom. 149**

FIRE-ARMS.

——— parts of—

See MISJOINDER OF CHARGES. **I. L. R. 42 Calc. 1153**

FIRST CHARGE.

See RATES AND TAXES.

I. L. R. 42 Calc. 625

FISHERY.

——————————— *Right of jalkar or fishery in tidal navigable river in Bengal—River forming new channel not gradually but suddenly —Right of grantee of jalkar to follow the river where the subjacent soil does not belong to his grantor, the Crown, but to a riparian proprietor—Grant of rights by the Crown—Proof of title when no actual grant is in existence—Jalkar in existence from before the permanent settlement—English law of waters—Alluvion—Regulation XI of 1825.* The appellants claimed as proprietors of a several jalkar or fishery in certain tidal navigable waters in Eastern Bengal a decree for possession of an exclusive fishery in a portion of a suddenly and newly formed river channel as falling within the upstream and downstream limits of their several fishery, and alleged that the respondents were trespassers when they fished in it. The respondents pleaded their right to fish in a portion of the channel, of which they owned both the bed and the banks, as owners of the subjacent soil. There was no actual grant proved but the appellants produced documentary evidence which showed the existence of the jalkar as appertaining to their zamindari from before the permanent Settlement: *Held*, that original grants of jalkar prior to the Permanent Settlement are but rarely forthcoming, and resort must be had to secondary evidence of them, or to the inference of a legal origin to be drawn from long user. *Horidas Mal* v. *Mahomed Jaki, I. L. R., 11 Calc. 434*, per GARTH, C. J.; and the rule in *Fitzwalter's Case, 3 Keble 242*, that the evidence of a Government grant of an exclusive fishery in navigable waters ought to be conclusive and clear, followed. *Held*, in the present case, so far as such evidence can now be expected to be forthcoming as to particular grants more than a century old, that the evidence was sufficient to show that the competent authority—the Government of India in right of the Crown—did actually grant to the appellants' predecessors in title, or settle with them so as in effect to grant a jalkar right of several fishery in certain of the waters of the Ganges system in this suit: *Held*, also, (following a numerous body of decisions in the Indian Courts) that it must now be taken as decided in Bengal that the Government grantee of a jalkar right can follow the shifting river for the enjoyment of his exclusive fishery so long as the waters form part of the river system within the upstream and downstream limits of his grant, whether the Government owns the soil subjacent to such waters as being the long-established bed, or whether the soil is still in a riparian proprietor as being the site of the river's recent encroachment. The whole series of decisions in Bengal on the subject from 1807 to 1905 reviewed and discussed. The English common law admittedly does not apply to the mofussil of India, yet the Indian Courts have in many respects followed the English law of waters; and their Lordships

FISHERY—*concld.*

have given careful consideration to the arguments that principles established under and for English conditions afford a sound guide to the rules which should be enforced in India; though they would in any case be slow to disturb decisions by which rules have been established for Bengal governing exclusive and important rights such as rights of jalkar, and unless they could be shown to be manifestly unjust or flagrantly inexpedient, their Lordships would not supersede them. The analogous rule in the United Kingdom connecting the subject's right to an exclusive fishery in tidal navigable waters with the limits of the Crown's ownership of the subjacent soil, is the result of conditions partly historical and partly geographical which have no counterpart in Lower Bengal, where above all the difference, indeed the contrast, of physical conditions is capital. By no analogy can rules applicable to the small, slow-running and comparatively unchanging rivers of England be profitably applied to such differing conditions. In the case of alluvion as applied to rights of jalkar, and the argument that the right to follow the river ought to be limited to cases where the river encroachments were gradual, and should not be extended to an irruption as sudden and rapid as was the formation of the new channel in the respondents' lands, the Indian law, doubtless guided by local physical conditions has adopted in Regulation XI of 1825, ss. 1 and 4, a rule varying somewhat from the rule established in England, and the analogy of the English law can hardly be called in aid when Indian legislation has thus an established and different rule on the same subject. As to the Indian rule working injustice in that a land-owner not only loses the use of his land when the river overflows it, but also the right to fish over his own acres in order that another may unmeritoriously fish in his place, which cannot occur under the English rule, there is no such proof that one rule is better than the other as would even approach the conclusion that the rule established in India should be set aside. SRINATH ROY *v.* DINABANDHU SEN (1914) . . **I. L. R. 42 Calc. 489**

FISHING LEASE.

——————————— *for 9 years void for want of registration—Removal of fish under authority of lease, if wrongful—License—Co-sharer —Transfer of Property Act (IV of 1882), s. 107.* Where in a suit by one co-owner against another for damages for wrongful removal of fish from a tank, the defendant's plea was that he had been put in possession of the tank with the right of fishery therein for a period of nine years under an arrangement with his co-sharers and he proved that he had removed the fish under such authorisation: *Held*, that the arrangement proved was a sufficient answer to the suit, irrespective of any rights the defendant might have as a co-sharer, even if as a lease it was void under the provisions of the Transfer of Property Act. BEHARY LAL NANDI *v.* KEDAR NATH NEBU (1915).

19 C. W. N. 872

FITNESS.

——— of surety—

See SURETY . **I. L. R. 42 Calc. 706**

FORCE.

——— use of—

See BAILIFF . **I. L. R. 42 Calc. 313**

FOREIGN-COURT DECREE.

See DECREE . **I. L. R. 39 Bom. 34**

FOREIGN JUDGMENT.

See CIVIL PROCEDURE CODE (1908), SS. 11 AND 13 . . **I. L. R. 37 All. 1**

FORFEITURE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXII, R. 10.
I. L. R. 39 Bom. 568

See LESSOR AND LESSEE.
I. L. R. 38 Mad. 445

See PARDON.
I. L. R. 42 Calc. 756, 856

——— of deposit of earnest money—

See CONTRACT, BREACH OF.
I. L. R. 38 Mad. 801

——— *Press Act (I of 1910), s. 4 (1)—Order made by Local Government of Delhi—Jurisdiction—Delhi Laws Act (XIII of 1912).* Where an order was made under s. 4 (*1*) of the Indian Press Act, 1910, by the Local Government of Delhi, directing the forfeiture wherever found of all copies of a newspaper published on a certain date in Delhi, on an application to set aside the order made by a person who had in his possession in Calcutta a particular copy: *Held*, that this High Court had no jurisdiction to entertain the application. *In re* ABUL KALAM AZAD (1915)
I. L. R. 42 Calc. 730

FRAUD.

See ASSIGNEE OF MONEY DECREE.
I. L. R. 38 Mad. 36

See HINDU LAW—ADOPTION.
I. L. R. 39 Bom. 441

——— of creditors—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.
I. L. R. 38 Mad. 1076

See MORTGAGE BY MINOR.
I. L. R. 38 Mad. 1071

1. ——— *Decree—Decree based on perjured evidence—Suit to set aside—Onus of proof—Res judicata. Held*, that a suit to set aside a decree on the ground that the decree had been obtained by perjured and false evidence is not maintainable: *Held*, further, that where a decree was impeached on the ground of fraud, the fraud alleged must be actual positive fraud, a meditated and intentional contrivance to keep the parties and the Court in ignorance of the real facts of the case, and the obtaining of the decree

FRAUD—*contd.*

by that contrivance. *Nand Kumar Howladar* v. *Ram Jiban Howladar, I. L. R. 41 Calc. 990, Munshi Mosuful Huq* v. *Surendra Nath Ray, 16 C. W. N. 1002*, followed. *Chinnayya* v. *Ramanna, I. L. R. 38 Mad. 203, Baker* v. *Wadsworth, 67 L. J. Q. B. D. 301, Vadala* v. *Lawes, L. R. 25 Q. B. D. 310, Abouloff* v. *Oppenheimer & Co., L. R. 10 Q. B. D. 295*, referred to. *Venkatappa Naik* v. *Subba Naik, I. L. R. 29 Mad. 179*, dissented from. JANKI KUAR *v.* LACHMI NARAIN (1915) . . . . **I. L. R. 37 All. 535**

2. ——— *Fictitious rent-sale—Collusive sale arranged between putnidar and tenure-holder to get rid of under-tenure—Abuse of process—Duty of tenure-holder to protect under-tenure-holders from paramount claims—Transaction, a private sale.* Where a tenure-holder having offered to sell his interest to the *putnidar*, the latter agreed to pay the price asked only if the tenure was rid of the interest of subordinate tenure-holders, and it was arranged that the tenure-holder would make default in paying rent, and that the *putnidar* would sue him for arrears of rent and put up the tenure for sale in execution of the decree and that a person who had no intention of buying the property would be made to bid up to a figure approaching the price settled, which thereupon would be offered by the *putnidar*, and the sale was effected as arranged: *Held*, that the transaction should be viewed as a private sale which in fact it was, the form only of a Court sale having been gone through and abused with the object of defrauding the under-tenure-holders. A suit by the purchaser *putnidar* to annul an under-tenure and to recover possession must therefore fail. UMA CHARAN MANDAL *v.* MIDNAPORE ZEMINDARY CO. (1914) . . **19 C. W. N. 270**

3. ——— *Fraudulent agreement—Collusive decree obtained on such agreement—Fraud unsuccessful—Suit impugning agreement and decree—Defendant prevented from defending suit on the plaintiff's assurance that decree will not be executed against him—Suit to declare decree incapable of execution if lies.* The principle that a party to a fraudulent transaction is entitled to relief in a Court of Equity as against the fraudulent confederate so long as the fraud contemplated has not been carried into effect is not inapplicable merely because the party suffers a decree to be passed against him in a fictitious and collusive suit which is only a part of the fraudulent scheme. *Akhil Prodhan* v. *Manmotha Nath, 18 C. W. N. 1331: s. c. 18 C. L. J. 616*, and *Param Singh* v. *Lalji Mal, I. L. R. 1 All. 403*, followed. Where one of two defendants was prevented from making a proper defence to the suit by the fraudulent assurance of the plaintiff that the decree obtained would not be executed against him: *Held*, that the defendant was not estopped by the decree from suing for a declaration that the decree was incapable of execution. *Chenvirappa* v. *Puttappa, I. L. R. 11 Bom. 708*, followed. RAJAB ALI CHOUDHURY *v.* HADAYET ALI CHOUDHURY (1915) . **19 C. W. N. 1151**

FRAUD—*concld.*

4. ——————— *General allegations of fraud in pleading, if should be noticed.* Under the Contract Law of India, as well as by ordinary principles, coercion, undue influence, fraud and misrepresentation (though they may overlap or may be combined) are all separate and separable categories in law. General allegations, however strong, are insufficient even to amount to an averment of fraud of which any Court ought to take notice. The law of India is in no way different from this, and the Judicial Committee regret that the rule is not more strictly observed. *Gunga Narain Gupta* v. *Tiluckram Chowdhury, L. R. 15 I. A. 119*, referred to. BAL GANGADHAR TILAK *v.* SHRINIWAS PANDIT (1915) **19 C. W. N. 729**

5. ——————— *Suit to set aside a judgment for fraud—Discretionary relief—What acts constitute fraud—Obtaining decree by deliberate perjury, whether liable to be set aside as fraudulent.* A judgment in a previous suit cannot be set aside by a new suit based on an allegation that the decree-holder obtained it by practising a fraud on the Court, in the absence of the judgment-debtor, *viz.*, by suppressing certain material evidence in the case; for it was the duty of judgment-debtor to have got produced all his evidence in the previous suit. Suppression of material evidence is not fraud within the meaning of the rule enunciated in *The Duchess of Kensington's Case*, 2 Sm. L. C., 11th Edn.. 731 at p. 738, which is to the following effect:—In order that fraud may be a ground for vacating a judgment. it must be a fraud that is extrinsic or collateral to everything that has been adjudicated upon but not one that has been or must be deemed to have been dealt with by the Court. The power of the Court to set aside a judgment on the ground of fraud is a discretionary one which will be exercised in favour of the petitioner only if he had been free from fraud or any turpitude, or laches, sloth or lack of diligence in protecting his own interests. *Quœre:* Whether a judgment can be set aside for fraud on the ground that the successful party was guilty of deliberate perjury or suborning perjury English and Indian case law on the subject discussed. Examples of fraud which will vitiate a judgment, given. CHINNAYYA *v.* RAMANNA (1913) . **I. L. R. 38 Mad. 203**

FRAUDULENT TRANSFER.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 53.
I. L. R. 39 Bom. 507

G

GARDEN.

See HOMESTEAD LAND.
I. L. R. 42 Calc. 638

GARNISHEE ORDER.

See DECREE . **I. L. R. 39 Bom. 80**

GENERAL CLAUSES ACT, BOMBAY (BOM. I OF 1904).

——— **s. 3—**

See MAMLATDARS' COURTS' ACT, BOMBAY (BOM. ACT II OF 1906), S. 23.
I. L. R. 39 Bom. 552

GIFT.

See MAHOMEDAN LAW—GIFT.
I. L. R. 42 Calc. 361

See MALABAR LAW.
I. L. R. 38 Mad. 79

——— **by husband to wife—**

See MALABAR LAW.
I. L. R. 38 Mad. 79

GIFT-OVER.

See HINDU LAW—WILL.
I. L. R. 42 Calc. 561

GOODS.

——— **property in, at the time of capture—**

See CONFISCATION.
I. L. R. 42 Calc. 334

——— **shipped before war—**

See CONFISCATION.
I. L. R. 42 Calc. 334

GOODWILL.

See TRADE-MARK.
I. L. R. 42 Calc. 262

GOVERNMENT.

——— **liability of—**

See PENSIONS ACT (XXIII OF 1871). SS. 4, 5, 6 . **I. L. R. 37 All. 338**

——— **nature of—**

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

——— **right of, to streets, drains, etc.—**

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

——— **ultra vires order—**

See LIMITATION ACT (IX OF 1908), SCH. 1, ART. 14 . **I. L. R. 39 Bom. 494**

GOVERNMENT OFFICIALS IN BOMBAY.

See RESUMPTION **I. L. R. 39 Bom. 279**

GOVERNMENT ORDERS.

See MADRAS IRRIGATION CESS ACT (VII OF 1895), S. 1.
I. L. R. 38 Mad. 997

GOVERNOR-GENERAL IN COUNCIL.

——— **powers of—**

See LEAVE TO APPEAL TO PRIVY COUNCIL.
I. L. R. 42 Calc. 35

GRANT.

See GRANT BY CROWN.

See MINERAL RIGHTS.
I. L. R. 42 Calc. 346

GRANT—*contd.*

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10.
I. L. R. 38 Mad. 867

——— **as inam**—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8 . **I. L. R. 38 Mad. 891**

——— **of melvaram**—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8 . **I. L. R. 38 Mad. 891**

——— **to wife and minor son**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10 . **I. L. R. 38 Mad. 867**

1. ——— *Conduct of parties, reliance on for ascertaining intention of grantor.* That reliance could not be placed on the conduct of the parties to ascertain the intention of the grantor except in the case of ancient grants where the terms are ambiguous. CHRISTIAN *v.* TEKAITNI NARBADDA KOERI (1914) . **19 C. W. N. 796**

2. ——— *Construction of grant—Water-cess—Madras Water-cess Act (VII of 1865)—Free grant of water before—No right to impose water-cess thereafter.* If for some consideration or other or even for no consideration a grant was before the passing of Madras Water-cess Act (VII of 1865) made by the Government, of a particular quantity of water or a certain definite share of the water of a tank to a person irrespective of the use he might make of it, the grant is in law a free grant and the Government is not entitled to any kind of payment thereafter for the water under Madras Act VII of 1865. *Maria Susai Mudaliar* v. *The Secretary of State for India, 14 Mad. L. J. 350*, followed. *Secretary of State for India* v. *Swami Naratheeswarar, I. L. R. 34 Mad. 21*, distinguished. VENKATASUBBIAH *v.* SECRETARY OF STATE FOR INDIA (1912).
I. L. R. 38 Mad. 424

3. ——— *Grant for Barki service—Resumption of grant—Non-production of grant—Presumption as to right to resume cannot be made—Right of resumption must be proved.* In the Bombay Presidency where Deshgat Vatan lands are granted for the performance of personal services, no presumption can be made that the grantor has the option to determine the services and to resume the lands. If a grantor takes up that position and claims that as his right, he must show either that the terms of the grant give him that right or if the terms of the grant are unknown, that the proved circumstances justify an inference that he has that right. YELLAVA SAKREPPA *v.* BHIMAPPA GIREPPA (1914)
I. L. R. 39 Bom. 68

4. ——— *Grant of land, "besides poramboke," construction of—Padugai lands in Trichinopoly and Tanjore taluks, ownership of—'Padugai' meaning of.* A grant of land by the Government acknowledging the grantee's title to a whole village consisting of certain specified area 'besides poramboke' gives the grantee

GRANT—*concld.*

a right to all the unassessed waste in the village such as waste or padugai land, *i.e.*, land between a river-bed and the high flood bank of the river though it may not operate to give communal property such as burying-grounds, temple-sites, etc., to the grantee. *Narayanasami* v. *Kanniappa*, Second Appeal No. 1445 of 1910, and *Secretary of State* v. *Kannapallee Venkataratnammah, 23 Mad. L. J. 109*, referred to. Padugai land in Trichinopoly and Tanjore taluks mean land on the lower level bank breadth of the river between the edge of the sandy stream bed and the high flood level bank. SADASIVA AYYAR, J. The grant of poramboke does not operate to give the grantee the bed of the river. Meaning of the word 'Poramboke,' considered. SECRETARY OF STATE *v.* RAGHUNATHA TATHACHARIAR (1912).
I. L. R. 38 Mad. 108

GRANT BY CROWN.

See FISHERY . **I. L. R. 42 Calc. 489**

GRANTEES.

——— **estate of**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10 **I. L. R. 38 Mad. 867**

GUARDIAN.

See GUARDIAN FOR MARRIAGE.

See HINDU LAW—GUARDIAN.

——— **alienation by**—

See HINDU LAW—GUARDIAN.
I. L. R. 38 Mad. 1125

——— **application by**—

See GUARDIANS AND WARDS ACT (VIII OF 1890), S. 25.
I. L. R. 39 Bom. 438

1. ——— *Minor—Hindu Widow—Guardians and Wards Act (VIII of 1890), s. 7, sub-s. (3)—Appointment of guardian to a minor widow—Will—Whether before probate taken out, will may be considered in connection with appointment of guardian to a minor.* In an application for the appointment of a guardian of a minor, the Court is bound to consider a will, although probate has not been granted. The fact that there is a contest as to the validity of the will may induce the Court to exercise its discretion one way or the other, but it is not open to the Court to say it will refuse to take notice of the will. *Sayad Shahu* v. *Hapija Begam, I. L. R. 17 Bom. 560, Chinnasami* v. *Hariharabadra, I. L. R. 16 Mad. 380*, and *Pathan Ali Khan Badlukhan* v. *Bai Panibai, I. L. R. 19 Bom. 832*, referred to. SARALA SUNDARI DEBI *v.* HAZARI DASI DEBI (1915) . . . . **I. L. R. 42 Calc. 953**

2. ——— *Hindu father entrusting sons for custody and education in England to another person who defrays expense of their maintenance and education—Revocation of such authority and demand for sons to be restored to his custody—Suit to enforce demand in District Court—Questions to be determined in such a suit—Juris-*

GUARDIAN—*contd.*

diction of the District Court—Guardians and Wards Act (VIII of 1890), s. 9—'Ordinarily resident,' meaning of—Suit, not the appropriate procedure—Transfer of suit from the District Court to the High Court under clause 13 of the Letters Patent, 1865—Powers of the High Court in dealing with the suits so transferred—Mandatory order of the kind asked for, not to be made—What a Court of competent jurisdiction in India could do under the circumstances—Order declaring a guardian, when to be made—Guardians and Wards Act (VIII of 1890), s. 19—Order declaring a guardian during respondent's life, propriety of. Among Hindus, as in England, the father is the natural guardian of his children during their minority; but this guardianship is in the nature of a sacred trust, and he cannot therefore during his lifetime substitute another person to be guardian in his place. He may, in the exercise of his discretion as guardian, entrust the custody and education of his children to another; but the authority he thus confers is essentially a revocable authority, and if the welfare of his children require it, he can, notwithstanding any contract to the contrary, take such custody and education once more into his own hands. If however the authority has been acted upon in such a way as in the opinion of the Court exercising the jurisdiction of the Crown over infants to create associations or give rise to expectations on the part of the infants which it would be undesirable in their interests to disturb or disappoint, such Court will interfere to prevent its revocation. *Lyons* v. *Blenkin, (1821) Jac. 245* followed. The plaintiff (respondent) a Brahman residing at Madras, and having only a small income, had been for many years a member of the Theosophical Society of which the defendant (appellant) was President. He had two sons born respectively on 11th May 1895 and 30th May 1898. In 1910 the appellant offered to take charge of his sons and defray the expense of their maintenance and education in England and at the University of Oxford. The respondent accepted that offer, and by a letter to the appellant, dated 6th March 1910, authorised her to take charge and be guardian of his sons, who were thereafter in her custody and were eventually in February 1912 taken by her to England where she left them after making arrangements for giving them a course of tuition such as would enable them to enter the University. For reasons to which it is unnecessary to refer, the respondent, on 11th May 1912, cancelled his previous letter of 6th June 1910 and demanded that his sons should be restored to his custody, and on the appellant (then in India) refusing to comply with his demand he instituted in the District Court of Chingleput the present suit which was transferred to the High Court at Madras under clause 13 of the Letters Patent, 1865, and in the absence of the sons a decree was made and affirmed on appeal declaring that they were wards of Court, that the respondent was guardian of their persons, and ordering the appellant to make over custody of them to the respondent: *Held*, that the suit was entirely misconceived, that the respondent remained guardian of his sons notwithstanding that he had substituted the appellant in his place, that letter of 6th June 1910 has a revocable authority and that the real questions for decision were whether, in the events that had happened, the respondent was at liberty to revoke the authority, and was still entitled to exercise the functions of guardian, and resume the custody of his sons, and alter the scheme which had been formulated for their education; and those questions had to be determined with regard to the interests and welfare of the infants, and their parentage and religion, and could only be decided by a Court exercising the jurisdiction of the Crown over infants and in their presence that the District Court had no jurisdiction over them except such as was conferred by the Guardians and Wards Act (VIII of 1890) which was confined to infants ordinarily resident in the district and as the infants who had months previously left India with a view to being educated in England and going to the University of Oxford, could not be said to be ordinarily resident in the district of Chingleput, that Court had no jurisdiction in the matter, that a suit *inter partes* is not the form of procedure prescribed by that Act for proceedings in a District Court, touching the guardianship of infants, that the powers of the High Court in dealing with suits transferred to it under clause 13 of the Letters Patent, 1865, would seem to be confined to the powers which but for the transfer, might have been exercised by the District Court, that a mandatory order directing the defendants to take possession of the infants in England and bring them to India was one which considering their age could not be enforced if they refused to return to India and ought not to have been made, that the most which a Court of competent jurisdiction could do under the circumstances such as existed in the present case was to order the appellant to concur with the respondent as the infants' guardian in taking proceedings in England to regain the custody and control of his sons: *Held*, further, that with respect to the order declaring the infants wards of the Court and appointing the respondent as their guardian with the District Court could not have made in a suit which it was alleged that the High Court could in its general jurisdiction make; that whatever may have been the jurisdiction of the High Court, to declare infants wards of the Court, an order declaring a guardian could only be made if the interests of the infants required it, and that an order made when the infants were not before the Court and without adequately considering them their interest could not be supported, that no order declaring a guardian could by resaon of s. 19 of the Guardians and Wards Act, 1890, be made during respondent's life unless in the opinion of the Court, he was unfit to be their guardian. Since the admission of the appeal the infants had been allowed to intervene, and they stated through counsel that they did not wish to return to India and abandon the chances of a University

GUARDIAN—*concld.*

education in England. The appeal was allowed, and the suit dismissed without prejudice to any application the respondent might think fit to make to the High Court in England touching the guardianship, custody and maintenance of his children. BESANT *v.* NARAYANIAH (1914)

I. L. R. 38 Mad. 807

GUARDIAN AD LITEM.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.

I. L. R. 38 Mad. 1076

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13; O. XXXII, R. 3

I. L. R. 37 All. 179

GUARDIAN FOR MARRIAGE.

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 42 Calc. 351

GUARDIANS AND WARDS ACT (VIII OF 1890).

——— **ss. 4(2), 24, 25, 26, 41, 47—**

See MAHOMEDAN LAM—MARRIAGE

I. L. R. 42 Calc. 351

——— **s. 7(3)—**

See GUARDIAN. **I. L. R. 42 Calc. 953**

——— **ss. 9 and 19—**

See GUARDIAN. **I. L. R. 38 Mad. 807**

——— **ss. 12, 24, 25**—*Minor—Grant of certificate—Fresh application for custody of minor—Jurisdiction—No regular suit maintainable.* The mother of a minor girl applied to be appointed her guardian. The girl was alleged to have been taken away by her elder sister but no action under s. 12 of Act VIII of 1890 was asked for. She got a certificate of guardianship issued to her. Later she applied asking for possession of the person of her daughter: *Held,* that she was entitled to do so. She was charged with the custody of the ward and could ask the Court to assist her to perform the duties imposed upon her by s. 24 of the Act. The District Judge was empowered to enfore all the provisions contained in the Act for the benefit of the minor. Further, that no separate suit could have been brought for the purpose. *Sham Lal* v. *Bindo, I. L. R. 26 All. 594,* followed. *Quœre.:* Whether an appeal lay from the order of the Judge rejecting the application. UTMA KUAR *v.* BHAGWANTA KUAR (1915)

I. L. R. 37 All. 515

——— **s. 25**—*Custody of Minor—Application by guardian—Guardian—need not be a certificated guardian.* An application under s. 25 of the Guardians and Wards Act (VIII of 1890) for the custody of a minor can be made by a guardian, who need not be a certificated guardian. DAYABHAI RAGHUNATHDAS *v.* BAI PARVATI (1915)

I. L. R. 39 Bom. 438

——— **ss. 39, 47, 48**—*Revocation of an order appointing a guardian on the ground that alleged minor attained majority before appointment of guardian, if an order under s. 39 and if appealable—S. 39 if exhaustive—Jurisdiction of District Judge to deal with matters of which cognizance may be required in the interests of justice—Inherent jurisdiction of Courts to recall orders obtained by suppression or misrepresentation of facts.* On the application of the appellant, she was appointed by the District Judge guardian of the person and property of the respondent, her daughter-in-law, who subsequently applied to the District Judge, for revocation of his order, on the ground that she had attained majority before the order appointing the appellant as her guardian was made. The District Judge took evidence and finding that the respondent's allegation was true revoked his previous order. Against this order of revocation, the appellant preferred an appeal to the High Court: *Held,* that s. 39 of the Guardians and Wards Act specifies the circumstances under which the Court may remove a guardian appointed under the statute, and the order in question was not made under the section and consequently was not appealable under cl. (*9*) of s. 47: *Held,* (as to the contention that as there was no section of the Guardians and Wards Act applicable in terms to the present matter, the District Judge was incompetent to enquire into the allegations of the respondent), that a Court which exercises powers under the Guardians and Wards Act has ample inherent jurisdiction to deal with matters brought before it, of which cognizance may be required in the interest of justice and the District Judge had jurisdiction to deal with the matter in question. S. 151, Civil Procedure Code, which provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court, does not formulate a new doctrine, but merely furnishes legislative recognition of a well-established principle which is applicable quite as much to Courts called upon to deal with matters under the Guardians and Wards Act as to ordinary Civil Courts. If an order has been obtained from the Court by a suppression of facts, if the Court has been overreached and has been induced to assume jurisdiction over a matter in which, upon a true state of facts, it does not possess jurisdiction, the Court is competent to recall the order obtained from it by suppression or misrepresentation of facts. That s. 48 was not a bar to the present proceedings and the District Judge had jurisdiction to entertain the application in the exercise of his inherent power. RASHMONI DASSI *v.* GANODA SUNDARI DASSI (1914)

19 C. W. N. 84

GUARDIANS AND WARDS ACT (VIII OF 1890)—*concld.*

——— **s. 39**—*concld.*

GUJARAT TALUQDARS ACT (BOM. VI OF 1888).

See KASBATIS. **I. L. R. 39 Bom. 625**

H

HANDWRITING.

———— comparison of, by Court :—

See CHARGE. **I. L. R. 42 Calc. 957**

HEIR.

———— claim of—

See OCCUPANCY HOLDING.
I. L. R 42 Calc. 254

———— of Legatee—

See SUCCESSION ACT (X OF 1865), S. 187.
I. L. R. 38 Mad. 988

———— of Promisor—

See PRE-EMPTION.
I. L. R. 38 Mad. 114

HEREDITARY OFFICE.

See LIMITATION. **I. L. R. 42 Calc. 244**

HEREDITARY OFFICES ACT (BOM. III OF 1874).

———— s. 5.—*Mortgage by Vatandar—Suit for account and redemption—Adverse possession by mortgagee—Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 13—Mesne profits from the date of suit.* One Madhavrao, grandfather of the plaintiff, by a deed dated the 15th July 1867, mortgaged with possession certain Vatan Inam lands to Babaji Anant, an ancestor of the defendants. Madhavrao died, 1873, and in 1909 plaintiff sued to redeem the mortgage under the provisions of the Dekkhan Agriculturists' Relief Act, 1879. The defendants contended that by reason of the provisions of s. 5 of the Vatan Act, the mortgage became void on the death of Madhavrao and that they had been in possession adversely since that date. The Court of first instance disallowed the contention on the ground that the mortgagee claimed to hold the property as such and not as owner, and after taking accounts passed a decree in favour of the plaintiff awarding mesne profits from the date of suit till possession at rupees four hundred a year. This decree was confirmed by the lower appellate Court. On appeal to the High Court. *Held*, that the mortgagee remained a mortgagee for the purpose of the redemption suit, even assuming that he had been in possession for more than twelve years since the death of the original mortgagor. Unless there was some definite indication on the part of the person in possession that he would from a certain date claim as absolute owner, and not as mortgagee, he could only acquire by adverse possession the limited interest to which he was entitled at the mortgagor's death namely, that of a mortgagee. *Held*, further, that mesne profits from the date of suit could not be awarded as the enforcement of the provisions of s. 13 of the Dekkhan Articulturists' Relief Act, 1879, placed the mortgagor in a much more favourable position than he would be in if he relied upon the terms of the contract, and no presumption could arise that the mortgagee was, apart from the provisions

HEREDITARY OFFICES ACT (BOM. III OF 1874)—*concld.*

———— s. 5—*concld.*

of the Act, not entitled to retain possession after the date of the institution of the suit. *Janoji* v. *Janoji, I. L. R. 7 Bom. 185*, applied. RAMCHANDRA VENKAJI NAIK *v.* KALLO DEVJI DESHPANDE (1915) . . **I. L. R. 39 Bom. 587**

HEREDITY.

———— principle of—

See MAHOMEDAN LAW—MUTAWALLI.
I. L. R. 38 Mad. 491

HERITABLE ESTATE.

See JAIGIR **I. L. R. 42 Calc. 305**

HIGH COURT.

See HIGH COURTS ACT (24 & 25 VICT. C. 104), SS. 2, 9 AND 13.
I. L. R. 39 Bom. 604

———— inherent power of—

See APPEAL. **I. L. R. 42 Calc. 433**

———— interference by—

See ACQUITTAL. **I. L. R. 42 Calc. 612**

———— power of—

See CRIMINAL PROCEDURE CODE, SS. 439 AND 562. **I. L. R. 37 All. 31.**

See EXTRADITION WARRANT.
I. L. R. 42 Calc. 793.

See REMAND. **I. L. R. 42 Calc. 888**

———— power of interference by, under Charter Act—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 144.
I. L. R. 38 Mad. 489

———— revisional jurisdiction of—

See CRIMINAL PROCEDURE CODE, SS. 345 AND 439. **I. L. R. 37 All. 419**

HIGH COURT, JURISDICTION OF.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 203.
I. L. R. 38 Mad. 512

HIGH COURT MANUAL OF CIVIL CIRCULARS.

———— Chapter VIII—

See COSTS. **I. L. R. 39 Bom. 383**

HIGH COURT RULES (APPELLATE SIDE).

———— Rules 1 and 5—

See HIGH COURTS ACT (24 & 25 VICT. C. 104), SS, 2, 9, 13.
I. L. R. 39 Bom. 604

HIGH COURT RULES (ORIGINAL SIDE).

——— **Rule 62—**

See HIGH-COURTS ACT (24 & 25 VICT. C. 104), SS. 2, 9 AND 13.
I. L. R. 39 Bom. 604

——— **Rule 704—**

See COSTS. **I. L. R. 39 Bom. 383**

HIGH COURTS ACT (24 & 25 VICT. C. 104).

——— **ss. 2, 9, and 13**—*Amended Letters Patent, clauses 11 and 26—High Court Rules, Original Side, Rules 62—High Court Rules, Appellate Side Rules 1 and 5—Single Judge sitting on the Original Side of the High Court—Power to stay suit pending before a Subordinate Judge's Court in the mofussil.* It is not competent to a single Judge of the Bombay High Court, exercising the ordinary original civil jurisdiction of the Court, to stay the hearing of a suit pending for trial in a Subordinate Judge's Court in the mofussil, unless authorised so to do by rules. *Per* MACLEOD J.—A single Judge sitting on the Original Side of the High Court is competent to restrain the parties in a suit before him from proceeding with a suit in a Sub-Judge's Court in the mofussil, and so in effect stay the proceedings. NARAYAN VITHAL SAMANT *v.* JANKIBAI (1915) . **I. L. R. 39 Bom. 604.**

HINDU JOINT-FAMILY.

See HINDU LAW—JOINT FAMILY.

See MINOR **I. L. R. 42 Calc. 225**

HINDU LAW.

	Col.
ADOPTION	200
ALIENATION	203
BANDHUS	205
CUSTOM	205
DEBT	206
ENDOWMENT	206
GUARDIAN	208
HUSBAND AND WIFE	208
INHERITANCE	209
JOINT FAMILY	213
MAINTENANCE	215
MARRIAGE	215
MINOR	216
MORTGAGE	217
PARTITION	217
REVERSIONERS	219
STRIDHAN	220
SUCCESSION	220
SURETY DEBT	221
WIDOW	222
WILL	223
WOMAN'S ESTATE	228

HINDU LAW—*contd.*

See AGRA TENANCY ACT (II OF 1901), S. 22. **I. L. R. 37 All. 658**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 850

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10. **I. L. R. 38 Mad. 867**

HINDU LAW—ADOPTION.

1. ——— *Adoption—Half-brother-Mitakshara.* The adoption of a half-brother is not invalid under Hindu Law. GAJANAN BALKRISHNA *v.* KASHINATH NARAYAN (1915)
I. L. R. 39 Bom. 410

2. ——— *Adoption—Validity of adoption—Non-performance of ceremony of datta homam—Will giving power to widow to adopt with consent of trustees where one declines to act—Omission to follow provisions of s. 145 of Evidence Act as to using documents to contradict witnesses—Inferences drawn from documents so used, and basing decision on them to prejudice of witnesses—General allegations of undue influence and fraud without specific issues or pleas.* On this appeal, their Lordships of the Judicial Committee, in a suit to establish the validity of an adoption. *Held*, (reversing the decision of the High Court), that on the evidence and under the circumstances of the case the adoption was valid. Where the boy to be adopted is of the same *gotra* as the adoptive father the performance of the ceremony of *datta homam* is not essential to the validity of the adoption among Maratha Brahmins in Bombay. *Valubai* v. *Govind Kashinath, I. L. R. 24 Bom. 218*, approved, as being based not on the particular degree of relationship, but upon the broad ground of the identity of *gotra*. A Hindu testator by his will appointed five trustees of his property and gave power to his widow to adopt a son with their consent and advice; and one of the trustees declined to act. *Held*, that the consent of the declining trustee was not necessary, and the adoption made with the consent of the other four trustees was valid. It is a general salutary, and intelligible rule, and one substantially embodied in s. 145 of the Evidence Act (I of 1872) that if a witness is under cross-examination on oath, he should be given the opportunity, if documents are to be used against him, to tender his explanation and clear up the particular point of ambiguity or dispute: and the duty of enforcing such a rule is clear, especially where a witness' reputation or character is at stake. In this case, where the general principle of this rule and the specific provisions of s. 145 had not been followed but documents nad been used for the purpose of contradicting witnesses without calling their attention to the portions of the documents so used, their Lordships were of opinion that the decision of the High Court on the evidence amounted to an inferential verdict of perjury against the witnesses which was not justified. *Semble*: Where coercion, undue influence, fraud nd misrepresentation are

HINDU LAW—ADOPTION—*contd.*

set up as rendering a transaction invalid, each one should be specifically pleaded, and a definite issue upon it settled. In attacking an adoption an issue, " whether the plaintiff is a validly adopted son," is not one on which any of the above grounds should be permitted to be raised by general allegations. *Wallingford* v. *Mutual Society, L. R. 5 App. Cas. 685,* per Lord Selborne ; and *Gunga Narain Gupta* v. *Tiluckram Chowdhry, I. L. R. 15 Calc. 533 : L. R. 15 I. A. 119,* referred to as to the defence of fraud. BAL GANGADAR TILAK *v.* SHRINIVAS PANDIT (1915)

I. L. R. 39 Bom. 441

3. ——— *Adoption—Effect of invalid adoption—Invalidly adopted son not entitled to maintenance—Declaration in writing that the declarant will give certain lands as maintenance—Formal agreement not executed—Grantor cannot be sued on the declaration—Incomplete contract.* Under Hindu Law, a boy whose adoption has been found to be invalid has no right to be maintained out of the estate of the adopted family. The plaintiff claiming to be the adopted son of the late Thakor of Mehelol, applied to obtain certain lands from the estate by way of maintenance, to the Collector who was in charge of the estate. The Collector persuaded the present Thakor (defendant) to settle the matter. Accordingly, the defendant made a declaration in writing that he would give the Kankanpur *wanta* by way of maintenance to the plaintiff and his direct lineal heirs. The defendant did not execute any formal deed to convey the lands. The plaintiff sued to recover the Kankanpur *wania* from the defendant on the strength of the declaration :—*Held,* that the defendant was not bound by the declaration, which marked only a stage in the negotiations, which, unless completed, could be broken off at any time by either side. DALPATSINGHJI *v.* RAISINGJI (1915)

I. L. R. 39 Bom. 528

4. ——— *Adoption—Authority to adopt, construction of—Extrinsic evidence, admissibility of—Successive adoptions—Limits for the exercise of the power to adopt—First adopted son, death of—His widow alive—Second adoption by widow of previous owner, validity of—Impartible zamindari, how far joint family property—Vesting of property in a co-parcener, meaning of—Divesting of property by adoption—Rule as to adoption to last male holder—Applicability of rule to ordinary co-parcenary and to impartible zamindari.* *A*, the holder of an impartible zamindari, died in 1868 without issue, leaving a widow *K*. Prior to his death, he executed a document authorising her to adopt a son to him. On his death his brother *R* succeeded to the estate. Subsequently in 1870, *K* adopted *B* who recovered the zamindari from *R* by suit and died in 1906 without issue leaving a widow *R.M.* On the death of *B*, the son of *R* succeeded to the zamindari but died fifteen days after his accession; the first and second defendants were his sons. In 1907, *K* purporting to act under the power given by her husband, adopted the plaintiff as a son to her husband, while *R.M.*, the widow of *B* was alive. The plaintiff sued to recover the zamindari from the defendants. The latter pleaded that the power to adopt given to *K* by *A* (her husband), did not authorise her to make a second adoption, that the existence of *R.M.*, was a bar to the exercise of the power even if it was not exhausted by the first adoption and that the adoption, not having been made to the last male holder, was invalid. *Held,* that the power to adopt given by *A* to *K* was wide enough to enable her to make a second adoption ; but that the power was not exercisable by reason of the fact that *R.M.* (*B*'s widow) was alive when the second adoption was made by *K*. *Per* WHITE, C. J.—The rule that an adoption should be made to the last male owner is applicable to a joint Hindu family living under the Mitakshara law. *Siragnanam Servaigar* v. *Ramasawmy Chettiar, 22 Mad. L. J. 85,* referred to. *Per* SESHAGIRI AYYAR, J.—The canon of construction regarding powers to adopt is not different from that of ordinary testamentary dispositions : the intention of the testator has to be gathered from the language employed by him and from the circumstances existing at the time of the grant of the power. The authority given by a Hindu to his wife should be regarded as being general in its nature unless conditions have been imposed or limitations placed upon it by him. Where the exercise of a power to make a second adoption will not result in creating a new line of succession but will only transfer the estate from one intermediate owner to another with the prospect of the latter being eventually divested, the limit of the power to adopt should be held to have been reached. An estate taken by survivorship by a member of a joint Hindu family is a conditional estate subject to defeasance on the coming into existence by adoption or otherwise, of a new member into the co-parcenary ; the rule of law that, in order that an estate once vested may by divested, the adoption should be made to the last male holder, is not applicable to co-parcenary property ; and an impartible zamindari is joint family property subject to an exception. MADANA MOHANA *v.* PURUSHOTHAMA (1914) . . . **I. L. R. 38 Mad. 1105**

5. ——— *Adoption by widow acting with her deceased husband's authority of her brother's son—Authority to adopt a particular boy whom her husband could and would have adopted had he lived—Rejection of the extension by Nanda Pandit in Dattaka Mimansa to adoption by females of rule of Hindu Law against adoption of son whose mother the adopter could not have legally married.* The adoption by a Hindu widow acting in accordance with authority given her by her deceased husband is an adoption not to herself, but to her husband, and is therefore not, according to Hindu Law, invalid by reason of the adopted boy being her brother's son. *Jai Singh Pal Singh* v. *Bijai Pal Singh, I. L. R. 27 All. 417, Sriramlulu* v. *Rammayya, I. L. R. 3 Mad. 15,* and *Bai Nani* v. *Chunilal, I. L. R. 22 Bom. 973,* approved of.

HINDU LAW—ADOPTION—*concld.*

The gloss of Nanda Pandit in the Dattaka Mimansa purporting to extend to adoption by females the rule of Hindu Law that no one can be adopted as a son whose mother the adopter could not have legally married, rejected as being an extension not based upon the authority of the Smritis or institutes of sages, and not being shown to have been accepted as the law of India, so far as adoptions by widows to their deceased husbands are concerned. In the present case the authority of the husband to the widow was a specific authority to her to adopt a particular boy whom she did adopt and whom he could and presumably would, have adopted had he lived. PUTTU LAL *v.* PARBATI KUNWAR (1915)

I. L. R. 37 All. 359

HINDU LAW—ALIENATION.

1. ——— *Alienation by widow—Mortgages executed with alleged consent of reversioners—Nature of proof required of consent which must be established by positive evidence—Absence of proof of legal necessity—Presumption afforded by consent of reversioner.* In this appeal which arose out of suits to recover property mortgaged by a Hindu widow it was *held* (affirming the decisions of the Courts in India), that the part taken by the reversioners with respect to the mortgages in question did not, under the circumstances, amount to a consent to bind their interests. When a " stringent equity " arising out of an alleged consent by reversioners is sought to be enforced against them, such consent must be established by positive evidence that upon an intelligent understanding of the nature of the dealings they concurred in binding their interests; and that such consent should not be inferred from ambiguous acts, or be supported by dubious oral testimony such as appeared to have been relied upon in this case. *Jiwan Singh* v. *Misri Lal, I. L. R. 18 All. 146; L. R. 23 I. A. 1, per* LORD HOBHOUSE, referred to. HARI KISHEN BHAGAT *v.* KASHI PERSHAD SINGH (1914) . . . . **I. L. R. 42 Calc. 876**

2. ——— *Alienation by widow—Construction of deed of sale executed by widow—Whether it conveyed an absolute interest in the property or only a limited interest—Legal necessity—Evidence of intention of parties—Construction of deeds executed by natives of India—Recitals in deed as showing necessity and intention of executants.* In this appeal their Lordships of the Judicial Committee held (reversing the decree of the High Court and restoring that of the Subordinate Judge) that on the construction of a deed of sale executed by a Hindu widow of property held by her as heir of her husband in favour of the appellant, she conveyed her absolute interest in such property, and not only the limited interest of a Hindu widow. Recitals to the effect, (*a*) that the husband did not leave property the produce of which was sufficient to meet her necessary expenses, (*b*) that she had been obliged to borrow money to provide the ordinary necessaries of life, (*c*) that there were ancestral debts still unpaid, and creditors pressing

HINDU LAW—ALIENATION—*contd.*

for payment, and (*d*) that the only way to discharge them was to sell a portion of the property of her deceased husband, recitals which were necessary if the executant were disposing of her absolute interest, but serving no purpose if the object was to convey merely the limited interest of a widow, were held to show that the circumstances were such as to give her power to dispose of her absolute interest, and from which the inference could reasonably be drawn that it was her intention so to dispose of it. Referring to the case of *Hunooman Persaud Pandey* v. *Babooee Munraj Koonweree, 6 Moo. I. A. 393, 412,* as to the liberal construction it was necessary to put upon deeds executed by natives of India, their Lordships were of opinion that an examination in detail of the provisions of the deed in this case left no doubt in their minds that all the parties to it meant that the absolute interest in the property should be conveyed to the purchaser, and though that it had by the deed been effectually conveyed to him. That interest might well be construed as meaning the right to and interest in the property which the widow had, in the particular circumstances of the case, powers, for the purpose indicated, to sell and dispose of, that is, the absolute interest, and not (as held by the High Court) as merely meaning the right and interest which a widow normally takes in the immoveable property which her husband owned at his death and leaves after him. Any other construction their Lordships thought would plainly defeat the object and intention of the contracting parties. VASONJI MORARJI *v.* CHANDA BIBI (1915)

I. L. R. 37 All. 369

3. ——— *Contract by father to sell family lands—Suit for specific performance against father—Son added subsequently as defendant—No necessity for contract—Contract not binding on son—Plaintiff's right to conveyance from father of his share only—Partial performance, meaning of—Sepectific Relief Act (I of 1877), s. 15—Contract by a co-parcener to sell his share in family property, and contract to sell specific family property, distinction between.* The plaintiff sued for specific performance of a contract or sale of certain lands and for possession. The contract was entered into by the first defendant, the undivided father of the second defendant who was subsequently added as a party to the suit. The first defendant pleaded that the contract was vitiated by undue influence and was a hard bargain that ought not to be enforced against him. The second defendant pleaded that the contract was entered into by the first without any legal necessity and was not enforceable in law. It was found that there was no undue influence or hard bargain and that there was no necessity to enter into the contract. The plaintiff offered to pay the full consideration for a conveyance of the lands which were the separate property of the first defendant and of his interest in the family lands. *Held,* that the plaintiff was not entitled to a decree for specific performance of the contract against the

HINDU LAW—ALIENATION—*concld.*

first defendant or the second defendant. *Per* SANKARAN NAIR, J.—A person is entitled to specific performance of a contract by a member of a Hindu family to sell his share of the family property. If a junior member of a Hindu family agrees to sell any specific property belonging to his family, a decree cannot be passed against him to sell his share of that specific property. *Kosuri Ramaraju* v. *Ivaluri Ramalingam, I. L. R. 26 Mad. 74, Srinivasa Reddi* v. *Sivarama Reddi, I. L. R. 32 Mad. 320,* and *Poraka Subbarami Reddi* v. *Vadlamudi Seshachalam Chetti, I. L. R. 33 Mad. 359,* referred to. *Nagiah* v. *Venkatarama Sastrulu, I. L. R. 37 Mad. 387,* dissented from. *Nanjaya Mudali* v. *Shanmuga Mudali, 15 Mad. L. T. 186,* followed. *Maharaja of Bobbili* v. *Venkataramanjulu Naidu, 16 Mad. L. T. 181,* referred to. SUBBA *v.* VENKATRAMI (1914)

I. L. R. 38 Mad. 1187

HINDU LAW—BANDHUS.

——————— *Mitakshara—Bandhu—Grandfather's great-grandson's daughter's son not a bandhu under the Mitakshara law. Held,* that for *bandhu* relationship to exist it is essential that the person claiming to be *bandhu* and the last male owner must have been *sapindas* of each other. The rule of *sapinda* relationship under the Mitakshara law extends to seven degrees on the father's side and five degrees on the mother's side including the last owner. Therefore a grandfather's great-grandson's daughter's son is not a *bandhu* under the Mitakshara law. SHIB SAHAI *v.* SARASWATI, (1915)

I. L. R. 37 All. 583

HINDU LAW—CUSTOM.

——————— *Custom—Babuana and Sohag grants—Proof of Custom—Custom excluding females from succession in Darbhanga Raj family estate—Custom of exclusion not only from succession to Raj, but extending to succession in collateral branches of family—Custom effective notwithstanding partition had taken place in family branch.* In a suit by one of two brothers in a junior branch of the family of the Darbhanga Raj (an estate governed by the rule of male lineal primogeniture) against the widow of the other brother for possession of her deceased husband's property, on the ground that widows were by the custom of the family wholly excluded from succession, not only to the Raj itself, but also in the collateral branches of the family:—*Held,* that there was on the evidence a valid custom established in the junior branch of the family to which the parties belonged that widows did not inherit *babuana* properties, and that the succession in the case of *sohag* grants was governed by the same custom as governed the succession in the case of *babuana* grants. The custom applied in this case notwithstanding a separation and partition of the property which had been effected between the plaintiff and his brother; and consequently on his brother's death the plaintiff became entitled to such of the estate of his decease

HINDU LAW—CUSTOM—*concld.*

brother as consisted of *babuana* and *sohag* properties, together with accretions which had been made to the former property. *Held,* also, that the custom was strongly supported by instances in the family of widows, who would otherwise have been entitled to a Hindu widow's interest, having been excluded from, or not having claimed possession of property on the death of the husbands; and that the custom being proved to be well-established could not, under the circumstances, be defeated by the fact that in one instance as the evidence showed, it was not enforced. Words used in the *babuana* and *sohag* grants, "*auras putra poutradi,*" were held not to be words of general inheritance which would include female as well as male heirs, but words of limitation consistent with the custom which excluded females from succession under *babuana* and *sohag* grants which could not be made under the ordinary Hindu (in this case the Mithila) law. *Ram Lall Mookerjee* v. *Secretary of State for India, I. L. R. 7 Calc. 304; L. R. 8 I. A. 46.* EKRADESHWAR SINGH *v.* JANESHWARI BAHUASIN (1914) . . . **I. L. R. 42 Calc. 582**

HINDU LAW—DEBT.

See HINDU LAW—SURETY DEBT.

——————— *Debts—Widow—Duty of widow to pay her husband's debts even though time-barred—Widow not bound to pay debts repudiated by her husband in his life-time.* Under Hindu Law, a widow is under a pious obligation to pay her deceased husband's debts, even though they may be time-barred; but she is not bound to pay debts which her deceased husband had repudiated before his death. BHAGWAT BHASKAR *v.* NIVRATTI SAKHARAM (1914)

I. L. R. 39 Bom. 113

HINDU LAW—ENDOWMENT.

1. ——————— *Endowment—Election of mahant of temple—Sadhak or disciple of deceased mahant—Election by a majority of the dasnam bhik (ten classes of mendicants) assembled for purpose of such election—Separate election by faction of dasnam bhik.* An election of a mahant of a temple by the *dasnam bhik* (the ten classes of mendicants), in order to be a valid and effectual election must be made by a majority of the *dasnam bhik* assembled for that purpose. A separate election by a faction of the *dasnam bhik* is not a valid and effectual election. In this case which related to the election of a mahant to a temple at Hardwar, called Akhara Baba Sarwan Nath, both the appellant (plaintiff) and respondent (defendant in possession of the math property) claimed to have been duly elected on the same day, the 24th of February, 1905 (being the *terwin,* the 13th day ceremony after the death of the late mahant) their Lordships of the Judicial Committee (affirming the decision of the High Court, which had reserved that of the Subordinate Judge), *Held* that on the evidence and under the circumstances of the case, the appellant, who

HINDU LAW—ENDOWMENT—*contd.*

claimed to be the *sadhak* (disciple) of the deceased mahant, had failed to prove that he had been duly elected mahant of the temple. On the other hand there was large body of evidence in support of the respondent (the *sadhak* of a former mahant) whose election and also the bhandara or feast usual on the occasion had taken place within the temple which was customary, whereas the election of, and the feast given by, the appellant took place outside the temple; that a majority of the persons present at the election of the respondent who were qualified to elect a mahant voted in favour of the respondent; that in point of numbers and influence the respondent received more support than the appellant; and that there was no attempt on the part of the respondent to conceal (as the appellant alleged he had done) the arrangements he had made for the occasion. As it had not been shown that these points had been wrongly decided by the High Court, their Lordships dismissed the appeal. LAHAR PURI *v.* PURAN NATH (1915) . **I. L. R. 37 All. 298**

2. ——————— *Religious endowments—Shebait—Nature of debutter grants, where grantee is to enjoy properties from generation to generation on performance of sheba of the goddess—Permanent leases by grantee, validity of—Civil Procedure Code (Act V of 1908), s. 99—Ambiguity—Evidence.* In the construction of ancient grants and deeds, evidence is admissible as to the manner in which the thing granted has always been possessed and used, for so the parties thereto must be supposed to have intended. *Weld* v. *Hornby*, 7 East 197; 8 R. R. 608. *Rex* v. *Osbourne*, 4 East 32, followed. The Court may call in aid acts under the deed as a clue to the intention. *Doe* v. *Ries*, *8 Bing. 181*, followed. This principle does not apply unless there is an ambiguity. *Attorney-General* v. *The Corporation of Rochester*, *5 DeG. M. & G. 882*, followed. Consequently, while in a case of ambiguity the Court will uphold that construction of a deed which justifies a long usage as to the application of trust funds, the Court will not, where there is no ambiguity, accept an erroneous interpretation though consistent with usage, so as to sanction a manifest breach of trust. *Drummond* v. *Attorney-General*, *2 H. L. C. 837*, followed. If there is a deed which says, according to its true construction, one thing you cannot say that the deed means something else, merely because the parties have gone on for a long time so understanding it. *Sadlier* v. *Biggs*, *4 H. L. C. 435*, followed. Where two ancient *debutter* grants by one of the Maharajas of Pachete were held to be ambiguous, the properties having been given to the grantee *who was to enjoy them from generation to generation* on performance of the *sheba* of the goddess, and in 1829 the successors of the grantee gave two permanent leases to the predecessors in interest of the plaintiffs: *Held*, that in those circumstances the Court might determine the true character of the endowment from the manner in which the dedicated properties had been held and enjoyed.

HINDU LAW—ENDOWMENT—*concld.*

That the properties in dispute were not absolute *debutter* properties of the goddess, but were the personal properties of the grantees subject to the charge of the worship of the goddess. *Ganga* v. *Brindaban*, *3 W. R. 142*, *Madan* v. *Kamal*, *8 W. R. 42*, referred to. That the permanent leases had become indefeasible by lapse of time. *Jagamba Goswamini* v. *Ram Chandra Goswmi*, *I. L. R. 31 Calc. 314*, *Damodar Das* v. *Lakhan Das*, *I. L. R. 37 Calc. 885*; *L. R. 37 I. A. 147*, as explained in the case of *Madhu Sudan Mandal* v. *Radhika Prosad Das*, *16 C. L. J. 349*, followed. KULADA PROSAD DEGHORIA *v.* KALI DAS NAIK (1914)
I. L. R. 42 Calc. 536

HINDU LAW—GUARDIAN.

——————— *Guardian of a minor's person and property—Natural guardians, who are—Rights of parents, elder brother and direct male and female ancestors—Paternal aunt, not a natural guardian—King's rights, paramount—Recourse to Court, necessary, if no natural guardian alive—Alienation by de facto guardian—Setting aside, if necessary—Suit or possession—Limitation Act (IX of 1908), Art. 44 or 144, applicability of.* Under the Hindu law, nobody else than the father and the mother of a minor (with probable exceptions in favour of the elder brother and the direct male and female ancestors) is entitled as a matter of natural right to be and to act as a guardian of a minor's person and property; consequently a paternal aunt is not a natural guardian of a minor. Where there is no natural guardian alive, recourse must be had to the Court as representing the rights of the King which are paramount to even the rights of the parents, for the appointment of a guardian. Alienations without necessity, made by a *de facto* guardian, need not be set aside. Article 44 of the Limitation Act (IX of 1908) does not apply to alienations by unauthorised guardians. THAYAMMAL *v.* KUPPANNA KOUNDAN (1914)
I. L. R. 38 Mad. 1125

HINDU LAW—HUSBAND AND WIFE.

——————— *Acquisition of property by husband and wife—Joint-trade—Property, joint—Wife's interest—Stridhanam—Power of disposition—Death of wife—No survivorship to husband—Devolution on her heirs—Suit in ejectment—Decree for joint possession, if, can be given.* Where certain properties were acquired with the profits earned by a husband and his wife (who were Hindus) in a trade which was carried on by both of them: *Held*, that the properties were under the Hindu law the joint properties of the husband and the wife, and her interest therein was her stridhanam which on her death did not survive to her husband but devolved on the heirs to her stridhanam property. Property acquired by a woman by her own exertions during coverture is her own property which she is entitled to hold independently of her husband and it devolves on her heirs on her death. Though the suit be one in ejectment, a decree for joint possession may be passed in favour of the plaintiff. MUTHU

HINDU LAW—HUSBAND AND WIFE—*concld.*

RAMAKRISHNA NAICKEN *v.* MARIMUTHU GOUNDAN (1914) . . . **I. L. R. 38 Mad. 1036**

HINDU LAW—INHERITANCE.

See MOKUNDA LAL CHAKRABARTI *v.* MONMOHINI DEBI . **19 C. W. N. 472**

1. ——— *Inheritance—Illegitimate children, right of, to—Prostitution, not destroying kinship by blood—Mitakshara—"Daughters," meaning legitimate daughters.* Except in the case of Sudras, among whom illegitimate sons have a right of succession, illegitimate children are not heirs under the Hindu law, especially under the Mitakshara system, to succeed to the property of any kind left by either of their parents. Hence, a legitimate son of a Sudra woman, born in lawful wedlock, succeeds to the property acquired by his mother by prostitution after the death of his father and her illegitimate daughter born in prostitution is not an heir to such property. Prostitution does not sever the tie of kinship by blood and does not bring the prostitute within the category of "dancing girls" whose children are allowed by custom and precedent in Southern India the right of succession to the property acquired by their mothers. The word "daughters" in the rule of the Mitakshara which allows daughters to succeed to their parents' property in certain cases, means only legitimate daughters. MEENAKSHI *v.* MUNIANDI PANIKKAN (1914) **I. L. R. 38 Mad. 1144**

2. ——— *Inheritance—Leprosy, anæsthetic, not a ground of exclusion from—Incurability, not a safe test—Grounds of exclusion in texts, some obsolete.* Under the Hindu Law a person suffering from the anæsthetic form of leprosy though considered incurable by medical men, is not disentitled to inherit. *Obiter :—* Both the tests of Hindu Law texts and the decided cases fully establish that it is only the agonizing, sanious or ulcerous type of leprosy that is a disqualification to disinherit. Deformity and unfitness for social intercourse arising from the virulent and disgusting nature of the disease would appear to be what has been accepted in both the texts and the decisions as the most satisfactory test. Most of the decisions which have excluded lepers deal only with right to partition. *Janardhan Pandurang* v. *Gopal Pandurang, 5 Bom. H.C.R. (A.C.J.) 145 ; Ananta* v. *Ramabai, I. L. R. 1 Bom. 554 ; Rangayya Chetti* v. *Thanikachalla Mudali, I. L. R. 19 Mad. 74,* and *Helan Dasi* v. *Durga Das Mandal, 4 C.L.J. 323,* distinguished. *Ranchod* v. *Ajoobai, 9 Bom. L. R. 1149,* referred to. Many of the grounds of exclusion referred to in the texts would not now be enforced by the Courts and are practically obsolete KAYAROHANA PATHAN *v.* SUBBARAYA THEVAN (1913) . . . **I. L. R. 38 Mad. 250**

3. ——— *Inheritance—Mitakshara—Benares school of law—Great grandson of grandfather of deceased male owner—Grandson of greatgrandfather of deceased—"Putra," interpretation of—Lineal and collateral descendants—Blood relationship or propinquity among gotrajas—Test is capacity to offer oblations—Introducing into the decision the opinion of another Judge not a party to the judgment—Practice not approved.* On this appeal, in which the question for decision related to the order of succession under the Mitakshara, as expounded in the Benares school of Hindu law, among the collateral kindred belonging to the same parental stock as the last male owner, who died leaving no male issue, *Held* (affirming the decisions of the Courts in India), that the respondent (defendant) as the great grandson of the grandfather of the deceased, and the grandson of his paternal uncle, was the preferential heir as against the appellant (plaintiff) who was the grandson of the deceased's great grandfather. The word "*putra,*" which when used in relation to the last owner signifies and includes, "son, grandson and great grandson," thus including three degrees in the direct line of descent, is not to be construed in a literal and restricted sense when used in connexion with collateral relatives such as brother, uncle or grand-uncle. The following cases were referred to and discussed :— *Rutcheputty Dutt Iha* v. *Rajunder Narain Rae, 2 Moo. I. A. 132, 153, Bhyah Ram Singh* v. *Bhyah Ugur Singh, 13 Moo. I. A. 373. Kureem Chand Gurain* v. *Oodung Gurain, 6 W. R. 158, Kalian Rai* v. *Ram Chandar, I. L. R. 24 All. 128, Rachava* v. *Kalingapa, I. L. R. 16 Bom. 716, Parasara Bhattar* v. *Rangaraja Bhattar, I. L. R. 2 Mad. 202, Suraya Bhukta* v. *Lakshminarasamma, I. L. R. 5 Mad. 291,* and *Chinnasami Pillai* v. *Kunju Pillai, I. L. R. 35 Mad. 152,* and the last two cases were dissented from The respondent was also entitled to succeed on the ground that he admittedly conferred greater benefit on the deceased by the offerings he was capable of making to the manes of the common ancestor. In judging of the nearness of blood relationship or propinquity among the *gotrajas,* the test to discover the preferential heir is the capacity to offer the oblations. *Bhayah Ram Singh* v. *Bhyah Ugur Singh* and the principle laid down in the *Viramitrodaya,* Golap Chandra Shastri's Translation, page 91, chapter II, part I, s. 23*a.*, and by Dr. Sarvadhikari, Tagore Law Lectures (1880) page 629, followed. It is an undesirable course and one not approved by their Lordships of the Judicial Committee, to introduce the opinion of another Judge not a party to the judgment, for the purpose of enforcing the conclusion arrived at. BUDDHA SINGH *v.* LALTU SINGH (1915) . . **I. L. R. 37 All. 604**

4. ——— *Inheritance—Succession to Impartible Estate governed by rule of primogeniture where no custom excluding females existed—Widow of holder who died without male issue—Evidence of separation in joint family—Junior members leaving family-house and living in separate residence after obtaining grant for maintenance.* The succession, on the death of a holder without male issue, to an impartible estate which descended by the rule of primogeniture, the junior members of the family being entitled to grant for

HINDU LAW—INHERITANCE—*contd.*

maintenance, and where no custom excluding females existed, depended on whether there had been a separation between two brothers, the father and predecessor in title of the deceased holder and the father of the next contingent reversioner. On that question the Courts in India differed, the Subordinate Judge finding that a separation had taken place, and the High Court being of opinion that what had occurred did not, in intention and fact, amount to a complete separation. *Held* (reversing the decision of the High Court), that the evidence clearly proved that there had been a complete separation, and that the widow of the last holder was therefore entitled to succeed to the estate for a Hindu widow's interest in priority to the next male reversioner. TARA KUMARI *v.* CHATURBHUJ NARAYAN SINGH (1915)

I. L. R. 42 Calc. 1179

5. ——— *Right of bandhus to inherit—Bhinnagotra sapindas—Paternal grandather's son's son's daughter's sons—Limitation of sapinda relationship—Same limitation, namely, 7 degrees on father's side and 5 degrees on mother's side in respect of marriage, affinity, impurity and exequial rites and in cases of inheritance—Mitakshara, Ch. II, ss. 5 and 6.* The Hindu Law contains its own principles of exposition, and questions arising under it cannot be determined on abstract reasoning, or on analogies borrowed from other systems of law, but must depend for their decision on the rules and doctrines enunciated by its own law-givers and recognised expounders. The word "*bandhu*" has in the system of the Mitakshara a distinctive and technical meaning, in other words it signifies a *bhinnagotrasapinda.* The appellants as being the paternal grandfather's son's son's daughter's daughter's sons of a deceased Hindu, claimed to succeed to his property as his next-of-kin or *bandhus* under the Mitakshara Law. The respondents contended that the appellants had no heritable right in the property as they did not come within the category of *bandhus* entitled to succeed. *Held*, (*a*) that the *sapinda* relationship on which the heritable right of collaterals is founded ceases in the case of the *bhinnagotra sapinda* with the fifth degree from the common ancestor; and (*b*) that in order to entitle a man to succeed to the inheritance of another, he must be so related to the latter that they are *sapindas* of each other. The appellants, therefore, being sixth in descent from the common ancestor, and there being no *sapinda* relationship between them and the propositus, they came with neither (*a*) nor (*b*) and were not entitled to inherit. The decision in the case of *Greedharee Lall Roy* v. *Government of Bengal, 12 Moo. I. A. 448*, does not warrant the contention that the three classes of *bandhus*, namely *atma-bandhus, pitri-bandhus* and *matri-bandhus*, into which Vijnaneswara divides the *bandhus* in the Mitakshara, can be added to *or* extended. The limitation of *sapinda* relationship laid down in the Mitakshara (Achara Kanda), *i .e.*, that it ceases after the 7th ancestor on the father's side and the 5th ancestor on the mother's side, is not confined to prohibition in respect of marriage, impurity, and exequial rites only, but applies also to inheritance. *Lallubhai* v. *Mankuvarbai, I. L. R. 2 Bom. 388*, Per WESTROPP C. J., *Umaid Bahadur* v. *Udoi Chand, I. L. R. 6 Calc. 119*, and *Babu Lal* v. *Nanku Ram, I. L. R. 22 Calc. 339*, referred to. The value of the statement by Shastri Golap Chandra Sarkar in his work on Hindu law that "the word '*bandhu*' in the Mitakshara means and includes all cognate relations without any restriction, or at any rate all cognates within 7 degrees on both the father's as well as the mother's side," is considerably discounted by his desire, in order to prevent the deceased's property becoming, so to speak, derelict and thus escheating to the Crown, to bring in the caste people also as *bandhus;* and his employing the English equivalent of relation does not seem to be supported by the definition of *sapinda* relationship in the Mitakshara itself. The argument that the application of the *sapinda* relation in the case of *bandhus* should be extended beyond the 5th degree on the ground that it is not likely that Vijnaneswara would give a right of inheritance to a spiritual preceptor or *guru* before kinsmen, however remotely connected, ignores the peculiar and intimate relationship which exists in the Hindu system between the pupil and the *guru* who has to initiate him into the mysteries of the Vedic laws and rites, and under whose roof he has to pass so many years of his life, in which circumstances the mystical relationship between a spiritual preceptor and his pupil might well be regarded as creating a far closer tie than remote relationship of blood. RAMCHANDRA MARTAND WAIKAR *v.* VINAYEK VENKATESH KOTHEKAR (1914)

I. L. R. 42 Calc. 384

6. ——— *Inheritance—Mitakshara law—Succession of sapindas of same and different degrees—Uncle of half blood opposed as heir to son of uncle of whole blood—Civil Procedure Code (1882), ss. 317 and 231—Execution of mortgage decree by one of several decree-holders—Suit by heirs of the other decree-holders against decree-holder who, after a sale subject to rights of heirs of the others, claimed and obtained sole possession. Held* (affirming the decision of the High Court), that under the Mitakshara law the preferenec of heirs of the whole blood to those of the half blood confined to "sapindas of the same degrees of descent from the common ancestor." Where therefore, the choice of heirs lay between sapindas of different degrees, an uncle of the half blood as being less remote from the common ancestor, is a preferential heir to the sons of an uncle of the whole blood. *Suba Singh* v. *Sarfaraz Kunwar, I. L. R. 19 All. 215*, distinguished. The provisions of s. 317 of the Code of Civil Procedure, 1882, were designed to create some check on the practice of making so-called benami purchases at execution sales for the benefit of judgment-debtors and in no way affect the title of persons otherwise

HINDU-LAW—INHERITANCE—*concld.*

beneficially interested in the purchase. One of three joint decree-holders of a mortgage decree alone took out execution under s. 231 of the Code, stating that the other decree-holders had died, and praying that execution might be subject to the rights of their heirs and representatives. He obtained leave to bid at the sale, purchased the property in his own name, and, furnished with a certificate of sale, got possession of the property. *Held*, in a suit by the heirs of the other decree-holders for the shares they were entitled to under the decree, that s. 317 of the Code was not applicable as a defence to the suit, and that the plaintiffs were entitled to recover their shares of the mortgaged property. *Bodh Singh Doodhoria* v. *Gunesh Chunder Sen, 12 B. L. R. 317*, followed. GANGA SAHAI *v.* KESRI (1915)

I. L. R. 37 All. 545

HINDU LAW—JOINT FAMILY.

1. ——— *Joint family co-parcenary—Purchase from a co-parcener—Its effect on family co-parcenary—Alienee, not a tenant in common—One member becoming out-caste, excluded from the family—Limitation Act (IX of 1908), Art. 142.* When a co-parcener alienates his share in certain specific family property, the alienee does not acquire any interest in that property but only an equity to enforce his rights in a suit for partition and to have the property alienated set apart for the alienor's share if possible. *Hem Chunder Ghose* v. *Thako Moni Debi, I. L. R. 20 Calc. 533, Amolak Ram* v. *Chandan Singh, I. L. R. 24 All. 483, Narayan bin Babaji* v, *Nathaji Durgaji, I.L.R. 28 Bom. 201, Pandurang* v. *Bhasker, 11 Bom. H. C. R. 72* and *Udaram* v. *Ranu, 11 Bom. H. C. R. 76*, approved. The alienee cannot therefore sue for partition and allotment to him of his share of the property alienated. *Venkatarama* v. *Meera Labai, I. L. R. 13 Mad. 275, Palani Konan* v. *Masakonan, I. L. R. 201 Mad. 243*, and *Ramkishore Kedarnath* v. *Jainarayan Ramrachhpal, 14 Mad. L. T. 163*, referred to. Such an alienee has no right to possession and no status as a tenant in common. although he might have obtained possession of the property in execution of the decree against one of the co-parceners. *Deendyal Lal* v. *Jugdeep Narain Singh, L. R. 4 I. A. 247, Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L. R. 5 Calc. 148, Hardi Narain Sahu* v. *Ruder Perkash Misser, I. L. R. 10 Calc. 626*, followed. When a co-parcener became an out-caste and was driven out of the family, and did not enjoy family property for over 12 years, it amounted to exclusion and the right to recover his share is barred. *Per* BAKEWELL, J.—The transferee only acquires an equity and it is only a right *in personam* and not a right *in rem* and the transferor remains a member of the co-parcenary until partition is effected. The question whether a general or partial partition will lie is not one relating to the law of procedure but must be decided according to the principles of Hindu Law. *Subba Row* v. *Ananthanarayana Aiyar, 23 Mad. L. J. 64, 70*, and

HINDU LAW—JOINT FAMILY—*contd.*

Iburamsa Rowthan v. *Theruvangadasami Naick, I. L. R. 34 Mad. 269*, at p. 270, dissented from. A purchaser of the interest of a co-parcener must sue for a general partition of the entire family property. *Iburamsa Rowthan* v. *Theruvengadasami Naick, I. L. R. 34 Mad. 269, 274*, applied. When such purchaser fails to apply for amendment of his plaint, after an issue is raised questioning the frame of the suit, his suit is liable to be dismissed. *Subba Row* v. *Ananthanarayana Aiyar, 23 Mad. L. J. 64, 70*, referred to. MANJAYA *v.* SHANMUGA (1913) . **I. L. R. 38 Mad. 684**

2. ——— *Joint Hindu family—Son's right to dispute alienation made by father—Son conceived but not born at the date of the alienation. Held*, that a Hindu son is competent to contest and alienation made by the father at a time when the son was in his mother's womb. *Sabapathi* v. *Somasundram, I. L. R. 16 Mad. 76*, followed. *Mussamut Goura Chowdhrain* v. *Chummun Chowdry, W. R. Gap. No. 340*, not followed. *Kalidas Das* v. *Krishan Chandra Das, 2 B. L. R. 103, F. B., Hanmant Ramchandra* v. *Bhimacharya, I. L. R. 12 Bom. 105, Minakshi* v. *Virappa, I. L. R. 8 Mad. 89*, referred to. DEO NARAIN SINGH *v.* GANGA SINGH (1914)

I. L. R. 37 All. 162

3. ——— *Joint Hindu family—Suit against father—Son's position and rights in execution proceedings.* A creditor who has obtained a decree against the father of a joint Hindu family is entitled to put to sale the family property. The son whose interests are threatened is entitled to an opportunity of contesting both the factum and the nature of the debt, and there is nothing in law to prevent him from coming into court in the execution department and preventing, if possible, on those two grounds the passing of his interest to the auction purchaser. If the points are decided against him, the Court in execution can put the property to sale. *Shiam Lal* v. *Ganeshi Lal, I. L. R. 28 All. 288*, and *Channu Tewari* v. *Dwarka 3 All. L. J. 433*, followed. *Nanomi Babuasin* v. *Modhun Mohun, I. L. R. 13 Calc. 21*, referred to. *Per* PIGGOTT, J.—A creditor who at first made the sons of his debtor parties to a suit against the latter, but subsequently withdrew the suit as against them, would be in no worse position as regards the execution of his decree than he would have occupied if the sons had been impleaded. INDAR PAL *v.* THE IMPERIAL BANK 1915)

I. L. R. 37 All. 214

4. ——— *Joint Hindu family and joint family business—Contracts by certain members of the family for the benefit of the family—Managing members—Liability of the joint family for contracts entered into by managing members.* A joint Hindu family firm must be regarded like any other joint family asset if it in fact belongs to the joint family. If a business be carried on by the members of a joint Hindu family for the benefit of the entire family and there are members of the family who do not actively participate in the conduct of the business, particularly if such

HINDU LAW—JOINT FAMILY—*concld.*

business has been originally established to the detriment of the family property and handed down hereditarily, then the resultant liability of all the members of the family would be referable to the notion of managership by one or more members for the benefit of the rest in the usual sense in which the relations of the manager and other members of the family have often been accepted and defined in all the Courts and the liability of those members of the family not actively engaged in the conduct of the business would probably be restricted to the share of each such member in the joint Hindu family property. In a case where one or more members of a joint Hindu family start a business of their own not at the expense of the joint Hindu family nor with the intention of sharing its profits and losses with the other members, the position of the members so carrying on a joint family business and their liabilities to the other members have to be regulated to the extent to which the conduct of such a firm and the resulting profits fall within the legal notion of self acquisition. JOHARMAL LADHOORAM *v.* CHETRAM HARSING (1914)

I. L. R. 39 Bom. 715

HINDU LAW—MAINTENANCE.

———— *Maintenance of widow, rate of—Possession by widow of other property yielding income—Right to get maintenance from husband's estate.* The fact that a Hindu widow is able to maintain herself out of other property is no ground for not giving her some maintenance out of her husband's estate, but it is a factor to be taken into account in determining the quantum of maintenance to be decreed her. The right of a widow of a co-parcener in a Hindu family to maintenance is an absolute right due to her membership in the family and does not depend on any necessity arising from her want of other means to support herself. *Ramawati Koer* v. *Manjhari Koer, 4 C. L. J. 74*, dissented from. LINGAYYA *v.* KANAKAMMA (1913)

I. L. R. 38 Mad. 153

HINDU LAW—MARRIAGE.

———— *Dissolution of marriage—Custom of caste—custom authorising either spouse to divorce the other on payment of a sum of money fixed by the caste—Custom immoral and cannot be recognised by the Court—Indian Contract Act (IX of 1872), s. 23.* A custom, stated to exist among Hindus of the Pakhali caste by which the marriage tie can be dissolved by either husband or wife against the wish of the divorced party, the sole condition attached being the payment of a sum of money fixed by the caste, cannot be recognised by the Court. It must be regarded as immoral or opposed to public policy within the meaning of s. 23 of the Indian Contract Act (IX of 1872) and is equally repugnant to Hindu Law, which regards the marriage tie as so sacred that the possibility of divorce on the best of grounds is permitted only as a reluctant concession. *Reg.* v. *Karsán Goja* and *Reg.* v. *Bai Rupa, 2 Bom. H. C. R. 124*, followed. KESHAV HARGOVAN *v.* BAI GANDI (1915)

I. L. R. 39 Bom. 538

HINDU LAW—MINOR.

———— *Minor—Will—Incapacity to make—Contract, incapacity to make—Majority, age of, for making a will—Indian Majority Act (IX of 1875), s. 3, effect of—Onus of proving minority, on propounder of a will—Onus of proof, immaterial, where whole evidence recorded—Indian Evidence Act (I of 1872), s. 32 (5) and (6)—Recital in a father's will as to son's age, admissibility of—Indian Evidence Act (I of 1872), ss. 35 and 82—Register of births and deaths, admissibility of, under—Indian Evidence Act (I of 1872), s. 145—Document, intended to contradict witness, not put to witness, inadmissibility of—Horoscope, when admissible.* A Hindu minor though not governed by the Hindu Wills Act or the Indian Succession Act cannot make a will and the age of majority for the purposes of making a will is determined by the Indian Majority Act. *Subbayya* v. *Kondayya, 16 Mad. L. J. 135, Deheram Bulliya* v. *Somanchi, Seetharamayya, 2 Mad. W. N. 383, Bhagirathi Bai* v. *Vishwanath, 7 Bom. L. R. 92, Baigulalb* v. *Thakorelal I. L. R. 36 Bom. 622*, and *Hardwari Lal* v. *Gomi, I. L. R. 33 All. 525*, followed. *Per* TYABJI, J. (WHITE, C. J. *Obiter*). When the defence of minority of the testator is raised to invalidate a will, the onus is on the party setting up the will to show that the testator was of full age when he made it and in the matter of onus, minority and testamentary incapacity stand on the same footing; *Smee* v. *Smee, 5 P. D. 84*, and *Bhagirathi Rai* v. *Vishwanath, 7 Bom. L. R. 92*, followed. A horoscope which is not spoken to either by its writer or by one who had special means of knowledge as to its correctness is inadmissible in evidence. *Per* WHITE, C. J.—The question on whom the onus of proof lies is not of much importance when the whole evidence has been recorded. *Chaudhry Mohammad Mehdi Hasan Khan* v. *Sri Mandir Das, 17 C. W. N. 49*, followed. A recital in a testator's father's will mentioning the age of the testator is admissible to prove the age of the testator under s. 32, clauses (*5*) and (*6*) of the Evidence Act and illustration (*l*) to that section. *Oriental Government Security Life Assurance Company, Limited* v. *Narasimha Chari, I. L. R. 25 Mad. 183*, at p. 207, *Ram Chandra Dutt* v. *Jogeswar Narain Deo, I. L. R. 20 Calc. 758, Deheram Bulleyya* v. *Somanchi Seetharamayya, 2 Mad. W. N. 383*, and *Subramanian Chetti* v. *Doraisinga, 24 Mad. L. J. 49*, followed. A register of births and deaths kept under Madras Act III of 1899 is a public document and a certified copy thereof is admissible under ss. 35 and 82 of the Evidence Act. A document by which it is intended to contradict a witness will not be admissible in evidence under s. 145, Evidence Act, unless it is put to the witness or unless it is otherwise admissible under the Act. *Per* CURIAM: Under the Hindu Common Law a minor cannot make any disposition of property during his lifetime, *e.g.*, a gift; and consequently he cannot make any disposition of his property to take

HINDU LAW—MINOR—*concld.*

effect after his death. KRISHNAMACHARIAR *v.* KRISHNAMACHARIAR (1913) **I. L. R. 38 Mad. 166**

HINDU LAW—MORTGAGE.

———————— *Mortgage—Mitakshara—Mortgage by father to secure personal debt—Neither antecedent, nor for family purposes, nor immoral—Suit brought after his death—Limitation—Limitation Act (XV of 1877), Sch. II. Arts. 120, 132.—Transfer of Property Act (IV of 1882), s. 85, Civil Procedure Code (Act V of 1908), O. XXXIV, r. 1.* The Full Bench decision in the case of *Luchmun Dass* v. *Giridhur Chowdhry, I. L. R. 5 Calc. 855, is* still binding on this Court as no contrary rule has yet been laid down by the Judicial Committee of the Privy Council [either in *Nanomi Babuasin* v. *Modhun Mohun, I. L. R. 13 Calc. 21; L. R. 13 I. A. 1,* or *Bhagbut Pershad* v. *Girja Kœr, I. L. R. 15 Calc. 717; L. R. 15 I. A. 99*] nor has it been superseded by subsequent legislation as s. 85 of the Transfer of Property Act (now replaced by O. XXXIV, r. 1 of the Civil Procedure Code, 1808) cannot touch the question. Where a suit upon a mortgage effected by a father governed by the Mitakshara Law for a debt, which is neither antecedent nor for family purposes and not proved to be immoral, had been brought (more than six years) after the death of the father against the sons, some of whom were adult and some minors at the time of the mortgage :—*Held* (without deciding when the right to sue accrues), that Art. 132 of the Schedule to the Indian Limitation Act had no application as there was no charge on immovable property enforceable against the sons: consequently, Art. 120 governed the case. *Luchmun Dass* v. *Giridhur Chowdhry. I. L. R. 5 Calc. 855,* affirmed. *Kishun Pershad Chowdhry* v. *Tipan Pershad Singh, I. L. R. 34 Calc. 735,* approved. *Mahsewar Dutt Tewari* v. *Kishun Singh, I. L. R. 34 Calc. 184, Biswanath Pershad Mahata* v. *Jagdip Narain Singh, I. L. R. 40 Calc. 342; 17 C. W. N. 1025, Sheo Narain Ray* v. *Mokshoda Das Mittra, 17 C. W. N. 1022,* overruled. BRIJNANDAN SINGH *v.* BIDYA PRASAD SINGH (1915) . . . **I. L. R. 42 Calc. 1068**

HINDU LAW—PARTITION.

1. ———————— *Mitakshara—Partition by grandsons—Paternal step-grand-mother entitled to a share.* According to the Mitakshara, the paternal step-grandmother is entitled to a share in the family estate when it is partitioned among her grandsons. VITHAL RAMKRISHNA *v.* PRAHLAD RAMKRISHNA (1915) **I. L. R. 39 Bom. 373**

2. ———————— *Partition—Property to be partitioned should be taken as existing at the date of the suit—Shares taken away by some of the co-parceners before the suit not to be taken into account.* The plaintiff, as representing one branch of the family sued the defendants who represented other two branches, to recover by partition his share in the property which he alleged was one-third. The plaintiff had two brothers, one of whom had separated from the family by receiving his share (which then was 1-12th) some years

HINDU LAW—PARTITION—*contd.*

before the suit. The defendants contended that the 1-12th share should go in reduction of the plaintiff's share at the partition, that is, he was entitled to 1-3 minus 1-12=¼th share. The lower Court having awarded a ⅓rd share to the plaintiff, some of the defendants appealed :—*Held,* that the share to which the plaintiff was entitled in the family property was ⅓rd and not ¼th, for partition should be made *rebus sic stantibus* as on the date of the suit. PRANJIVANDAS SHIVLAL *v.* ICHHARAM (1915). **I. L. R. 39 Bom. 734**

3. ———————— *Suit for partition by a minor co-parcener—Right to mesne profits—No exclusion—Separate living of minor co-parcener—Same rule as in the case of major co-parceners suit for account—Principle different—Provision for expenses of Upanayanam and marriage of co-parceners in a partition suit—Setting apart of funds—Whether Upanayana and marriage of male co-pareners are obligatory ceremonies—Provision for marriage of unmarried sisters whether obligatory—Whether expenses of marriage of a male co-parcener is a reasonable expense—Right to maintenance of mother—Whether only son's share liable or share of step-sons also liable—Doctrine of Mitakshara as to right by birth examined—Civil Procedure Code (Act V of 1908), O. XLI, r. 3.* In a suit for partition by a minor co-parcener against his step-brother who was a major, the plaintiff is not entitled to recover mesne profits in the absence of proof of exclusion by the manager. The question of the right of a minor co-parcener to an account from the manager stands on a different principle and has no bearing in deciding whether a minor is entitled to claim mesne profits. *Krishna* v. *Subbanna, I. L. R. 7 Mad. 564,* and *Abhayachandra Roy Choudhry* v. *Pyari Mohan Guho, 5 B. L. R. 364,* referred to and explained. Where the mother of the plaintiff was joined as a defendant in the suit for partition, but a separate provision for maintenance was refused by the Court of First Instance on the ground that her maintenance should come out of the plaintiff's own share only, and she had appealed to the lower Appellate Court but preferred no Second Appeal to the High Court but was made a respondent in the Second Appeal preferred by the first defendant, it was held that the plaintiff who was a respondent in the Second Appeal was competent to prefer a memorandum of objections in the High Court objecting to the lower Court's refusal to make a provision for her maintenance, as he is affected by the judgment and interested in disputing its correctness. The High Court has power under Order XLI, rule 33, of the Civil Procedure Code to pass such decree as it thinks proper dealing with the rights of all parties before it. *Per* SUNDARA AYYAR, J.—In a suit for partitions provision must be made in the decree for expenses of the Upanayanam and marriage of male co-parceners as well as for the expenses of the marriage of the unmarried sisters out of the family property whether it is ancestral or separate or self-acquired property of the father of the

HINDU LAW—PARTITION—*concld.*

parties. Marriage is a proper ceremony for a Brahmin and an obligatory ceremony for all Hindus with extremely few exceptions. Modern custom is undoubtedly in favour of allowing the provision. In deciding what ceremonies are regarded as proper and necessary, regard should be had to the sentiments of the community, especially when there is a difference of opinion among the text writers. A brother who has had his own marriage performed at the family expense, is not entitled to object to a similar provision being made for the other brothers. The mother of a co-percener is entitled to have a provision made for her maintenance out of the entire family property including the share of her step-son as well as the share of her own son. *Zamindar of Oorcaud* v. *Meenakshi Ammal, 5 Mad. H. C. R. 377, Kumaravelu* v. *Virana Goundan, I. L. R. 5 Mad. 29, Subbarayalu Chetti* v. *Kamalavalli Thayramma, I. L. R. 35 Mad. 147,* referred to and followed. *Hemangini Dasi* v. *Kedarnath Kundu Chowdhry, I. L. R. 16 Calc. 758,* distinguished. *Per* SADASIVA AYYAR, J. Initiated brothers must set apart from the paternal estate the expenses of the initiation of the uninitiated brothers and sisters before dividing the paternal property whether it is ancestral or self-acquired property of the father. Upanayana or the ceremony of investiture of thread, in the case of a male member of a co-parcenary, and marriage in the case of a female are obligatory *samskaras* which the initiated brothers are bound to perform for their unitiated brothers and sisters, and the initiated brothers are bound to make a provision for the expenses of performing the same out of the paternal estate before it is divided. Marriage in the case of a male member of a co-parcenary is not an obligatory *samskara* for the performance of which the initated brother is bound to make a provision out of the paternal property at the partition. *Kameswarasastri* v. *Veeracharlu, I. L. R. 34 Mad. 433,* referred to. *Per* SPENCER, J., on reference—Marriage is an obligatory ceremony on Hindus who do not desire to adopt the life of a Sanyasi, and a fund for the expenses of the marriage of unmarried co-sharers should be set apart at the partition of the paternal estate. SRINIVASA IYENGAR *v.* THIRUVENGADATHA AIYANGAR (1914) **I. L. R. 38 Mad. 556**

HINDU LAW—REVERSIONERS.

———— *Suit for declaration by reversioner that deed of gift by holder of life-interest inoperative and for possession and other reliefs—Prayer in appeal confined to deed of gift only—Propriety of declaration—Court-fee stamp.* The plaintiffs claimed to be the reversionary heirs expectant of one D after the deaths of his widow and daughter, together with one S. It appeared that D's widow and daughter has executed a deed of *tamliknamah* in favour of S, who on his part claimed to be the sole immediate reversioner. In the plaint the prayer was for a declaration that the deed of gift was ineffective against the plaintiffs, for *khas* possession of the property in suit, for the appointment of a Receiver, for a declaration that the plaintiffs were the reversionary heirs after the death of D's widow and daughter. Court-fees were paid upon these prayers in the lower Court which dismissed the suit as premature but in the High Court the plaintiffs only sought for a declaration as to the deed of gift and for the appointment of a Receiver. At the hearing of the appeal the latter prayer also was given up. Rupees twenty only in court-fees was paid on the appeal. *Held,* that the appeal was sufficiently stamped. That the plaintiffs who on the evidence appeared to be some of the immediate reversioners were entitled to have the deed of gift declared inoperative as against themselves. That the fact that such a declaration must be founded on reasons that could support a declaration that they were heirs to D could not shut them out of their right to a declaration as to the invalidity of the document in question. JAGDEEP NARAIN SINGH *v.* JAIBASI KOER (1914) **19 C. W. N. 1191.**

HINDU LAW—STRIDHAN.

———— *Stridhan—Promise to give dowry at marriage—Land given years afterwards, if jautuka—Ajautuka properties, succession to—Preferential heir—Husband or brother.* On the death of a Hindu married woman, governed by the Dayabhaga Law, her *ajautuka stridhan* properties will aways be inherited by the brother in preference to the husband, irrespective of the form in which the marriage was celebrated. Property given by a brother to his sister, 7 years after the latter's marriage, in apparent fulfilment of a promise made at the time of marriage to give a quantity of land as dowry, is nevertheless *ajautuka,* as the promise could not have been specifically enforced in respect of the land given, which in fact was given after marriage. MAHENDRA NATH MAITY *v.* GIRIS CHANDRA MAITY (1915) **19 C. W. N. 1287**

HINDU LAW—SUCCESSION.

See KEDAR NATH BANERJEE *v.* HARIDAS GHOSH . . . **19 C. W. N. 1181**

1. ———— *Mitakshara, Ch. II, s. 5, pl. 4 and 5—Mayukha, Ch. VIII, pl. 18—Compact series of heirs—Brother's widow—Sapinda—Uncle's sons—Brother's widow nearer heir.* The widow of a brother of the deceased is, as a *sapinda,* a nearer heir of the deceased than his paternal uncle's sons. BASANGAVDA *v.* BASANGAVDA (1914). **I. L. R. 39 Bom. 87**

2. ———— *Mitakshara, Chap. II, s. 8, para. 2—Claim by plaintiff as Pitrai Chela to recover the property of a deceased Bairagi—Claim not maintainable on the ground of custom and Hindu Law—Bairagis—Sanyasis —Hermit, ascetic, student in theology—Heirs—Preceptor, virtuous pupil and spiritual brother in reverse order.* The plaintiff claiming as Pitrai Chela of a deceased Bairagi sued to recover the property of the deceased. *Held,* dismissing the suit, that both on the ground of custom and on the ground of Hindu Law the plaintiff had failed to make out his case. The

HINDU LAW—SUCCESSION—*concld.*

declared heir of a Sanyasi under the Mitakshara is a virtuous pupil. According to the Mitakshara, chap. II, s. 8, para. 2, the heirs of the property of a hermit, of an ascetic and of a student in theology are the preceptor, the virtuous pupil and the spiritual brother belonging to the same hermitage in the inverse order. *Quœre :* Whether Bairagis can be classed as Sanyasis because the order of Bairagis is not confined to the members of the twice born castes. RAMDAS GOPALDAS *v.* BALDEVDASJI KAUSHALYADASJI (1914)

I. L. R. 39 Bom. 168

3. ——— *Succession—Maiden's property—Preferential heir.* One Sitabai who became entitled to Rs. 3,000, under an insurance policy on the death of her father, died unmarried ; and the plaintiff, the sister of her mother, sued for a declaration that the defendant who was the step-mother of the deceased Sitabai was not her heir under the Hindu Law and that she as the maternal aunt of the deceased was her lawful heir and entitled to the amount that was held in deposit in Court. *Held*, that the plaintiff was not entitled to succeed in preference to the defendant. The sapindas, both of the father and the mother, must refer to the same persons as the mother becomes a member of the father's family on her marriage, *Tukaram* v. *Narayan Ramchandra, I. L. R. 36 Bom. 339, Janglubai* v. *Jetha Appaji, I. L. R. 32 Bom. 409,* and *Dwarka Nath Roy* v. *Sarat Chandra Singh Roy, I. L. R. 39 Calc. 319*, followed. The rule that female gotraja sapindas do not inherit as agnate relations taking the rank which they would be entitled to if their claims were based on sapinda relationship has been applied to the succession of male's property. *Balamma* v. *Pullayya, I. L. R. 18 Mad. 168*, and *Thayammal* v. *Annamalai Mudali, I. L. R. 19 Mad. 35*, referred to. The rule that in the case of succession to sridhanam property, a daughter inherits as sapinda where the succession has to be traced through the father or the husband applies also to the case of a wife or widow. *Manja Pillai* v. *Sivabhagiathachi 21 Mad. L. J. 851*, applied. KAMALA *v.* BHAGIRATHI (1912) . . **I. L. R. 38 Mad. 45**

HINDU LAW—SURETY DEBT.

——— *Surety-debt of father—Son's liability for—Order in execution against father as surety—Subsequent partition between father and son—Attachment of property allotted to son's share—Non-liability of such property—Claim petition by son, dismissal of—Subsequent suit by son—Liability of surety, if enforceable in execution—Civil Procedure Code (Act XIV of 1882), ss. 253, 583 and 610—Civil Procedure Code (Act V of 1908), s. 53—Inapplicable where father is living.* The second defendant obtained a decree for maintenance against the third defendant. Pending an appeal against the decree, the former recovered the amount in execution on the first defendant standing surety for the second defendant. The decree was reversed on

HINDU LAW—SURETY DEBT—*concld.*

appeal ; the third defendant applied in execution proceedings for restitution against the first defendant as surety ; an order was passed in execution for recovery of the amount against the first defendant and certain lands were attached. The plaintiff, who was the son of the first defendant, filed a claim petition objecting to the attachment on the ground that under a partition between his father and himself made subsequent to the order against the first defendant but before the attachment, the properties in question had fallen to his (plaintiff's) share and consequently were not liable to attachment. The petition was dismissed. The plaintiff thereupon brought the present suit for a declaration that the suit properties were not liable to be attached under the order passed against the first defendant. *Held*, that, under ss. 253 and 583 of the Civil Procedure Code (Act XIV of 1882), an order can be passed against a surety for recovering in execution proceedings the amount due from him. *Held*, further, that a Hindu son is liable for the surety-debt of his father, to the extent of the joint family property which came to his hands at partition. *Ramachandra Padayachi* v. *Kondayya Chetti, I. L. R. 24 Mad. 555*, followed. But a decree for such a debt obtained against the father before partition is not executable after partition against the son and the joint family property allotted to him. *Krishnasami Konan* v. *Ramasami Ayyar, I. L. R. 22 Mad. 519*, followed. S. 53 of the Code of Civil Procedure (Act V of 1908), which provides that property, in the hands of a son, which under the Hindu law is liable for the payment of a debt of his deceased father in respect of which a decree has been passed, shall be deemed to be assets in the hands of the legal representative only applies to the case of a deceased father ; the principle of the section cannot be extended to a case where the father is living. KAMESWARAMMA *v.* VENKATA SUBBA ROW (1914) . **I. L. R. 38 Mad. 1120**

HINDU LAW—WIDOW.

1. ——— *Hindu widow—Reversioners—Right of reversioner to sue—Suit to set aside alienation and for possession—Nearest reversionary heir alleged to be precluded from suing.* In this case it was *held* (affirming the decision of the High Court at Allahabad that the appellant could not maintain the suit (to set aside an alienation by a widow and for possession) because a nearer reversionary heir was in existence whom he had failed to prove to be precluded from suing. The general rules laid down in *Rani Anund Koer* v. *The Court of Wards, I. L. R. 6 Calc. 764 ; L. R. 8 I. A. 14*, followed. JHANDU *v.* TARIF (1914)

I. L. R. 37 All. 45

2. ——— *Rights of widow in respect of the property of her deceased husband.* A Hindu widow in possession as such of her husband's estate is not liable to account to anyone but is at liberty to do what she pleased with the property during her life-time, provided only that she does not injure the reversion. RENKA *v.* BHOLA NATH (1915) . . **I. L. R. 37 All. 177**

HINDU LAW—WILL.

1. _____ *Construction of will—Devise to widow—Gift-over—Life interest—Absolute gift—Power of appointment—Alienation by gift or sale—Administration suit—Cause of action.* A Hindu testator by his will provided for the performance of certain religious ceremonies and devised all his moveable and immoveable properties to his wife with power to alienate by gift or sale. He also by the same will made a gift-over to his daughter in the following terms :—"My daughter, Hara Kumari, shall become entitled to and possessor of whatever property will remain after your death and she shall enjoy the same keeping up and maintaining the aforesaid *sheba*, etc." The will then went on to say :—"the said daughter shall have the same rights as you have and he to whom my said daughter may willingly give away those properties shall while possessing the same and keeping up and maintaining the *sheba* enjoy them." At his death on the 11th March, 1866, the testator left him surviving his widow and an only daughter, Hara Kumari. The widow having obtained probate of the testator's will, executed on the 19th May, 1898. in favour of her two grand-daughters, Hemangini and Nagendrabala, born some time after the testator's death a deed of gift of certain properties acquired by her under the said will. On the 30th September, 1898, the widow died. In October, 1899, Mahim Chandra Sarkar, the testator's nephew, dispossessed Hemangini and Nagendrabala of these properties and took possession of the same. On the 8th March, 1908, Hara Kumari, in whose favour the High Court had decided a suit brought by Mahim Chandra Sarkar for the construction of the testator's will and for a declaration of the rights of the parties thereunder (*11 C. W. N. 412 ; 7 C. L. J. 540*) executed a deed of gift in favour of her daughter Hemangini and, on the 8th April, 1908, she also executed a similar deed in favour of her other daughter, Nagendrabala. and a *kobala* in favour of Hemangini. In suits brought for administration by Mahim Chandra Sarkar against Hara Kumari, who died during its pendency, for recovery of arrears of rent and cesses in respect of a certain *darpatni* belonging to the estate of the testator, by Mahim Chandra Sarkar against the *darpatnidar* and Hemangini and Nagendrabala and for recovery of possession of certain property acquired by virtue of the deed of gift from the testator's widow, by Hemangini and Nagendrabala against Mahim Chandra Sarkar. *Held*, that Mahim Chandra Sarkar had no cause of action and could not maintain the suit for administration. *Held*, also, that the testator could make an absolute gift to his daughter who was his reversionary heir in absolute estate and that the gift to her under her father's will was an absolute gift. *Held*, also, that there was no power of appointment to the daughter enjoining her to nominate an heir or successor to her father's estate. *Held*, also, that the provision for keeping up the *sheba* was merely a collateral charge on the property in whosever's hands it might be and did not affect the absolute character of

HINDU LAW—WILL—*contd*

the gift. *Brij Lal* v. *Suraj Bikram Singh, I. L. R. 34 All. 405*, distinguished. *Moulvie Mahomed Shumsool Hooda* v. *Shewukram, L. R. 2 I. A. 7, Radha Prasad Mullick* v. *Raneemoni Dassi, I. L. R. 35 Calc. 896 ; L. R. 35 I. A. 118, Jatindra Mohan Tagore* v. *Ganendra Mohan Tagore, 9 B. L. R. 377, Mussamut Kollany Kooer* v. *Luchmee Pershad, 24 W. R. 395, Thakur Singh* v. *Nokhe Singh, I. L. R. 23 All. 309*, and *Ramasami* v. *Papayya, I. L. R. 16 Mad. 466*, referred to. *Held*, also, that the *patni* was vested in Hemangini and Nagendrabala by alienation during Hara Kumari's life, that they were Harakumari's heirs, the property being *stridhan*, and that Mahim Chandra Sarkar had no title whatever to any of the properties left by Hara Kumari. *Held*, also, that the widow had absolute power of alienation in derogation of the rights of the sole reversioner, her daughter, who was only entitled to the residue, that the gift by the widow to Hemangini and Nagendrabala was valid, and that Mahim Chandra Sarkar could not plead his right as reversioner against a suit by the heirs of Hara Kumari to eject him as a trespasser, even though the gift should fail. *Hara Kumari Dasi* v. *Mahim Chandra Sarkar, 12 C. W. N. 412 ; 7 C. L. J. 540*, referred to. *Held*, further, that the power of alienation, which, though perhaps analogous to what was known as a power of appointment in English law, could not be governed by the rules of English law relating to such appointments. *Bai Motivahu* v. *Bai Mamubai, I. L. R. 21 Bom. 709*, referred to. MAHIM CHANDRA SARKAR *v.* HARA KUMARI DASI (1914) . . **I. L. R. 42 Calc. 561**

2. _____ *Construction of will—Bequest in favour of two brothers—Legatees to take in equal shares—Tenancy in common or joint tenancy.* A Hindu who had been adopted made will authorizing his wife to make an adoption, and in case she failed to do so, leaving his property to his two own brothers "in equal shares." *Held*, that the brothers took as tenants in common and not as joint tenants. *Gopi* v. *Jaldhara, I. L. R. 33 All. 41*, followed. *Mankamna Kunwar* v. *Balkishan Das, I. L. R. 28 All. 38*, distinguished. *Jogesswar Narain Deo* v. *Ram Chandra Dutt, I. L. R. 23 Calc. 670*, referred to. HAR PRASAD *v.* SUKHDEVI KUNWAR (1915)
I. L. R. 37 All. 241

3. _____ *Construction—Gift-over repugnant to previous gift—S. 116 of the Succession Act, scope and meaning of—Gift-over on the failure of prior bequest when such failure did not occur in manner contemplated by testator.* A Hindu testator governed by the *Mitakshara* School of Hindu Law died leaving a will and leaving him surviving his widow, two daughters and a minor son. The testator also left a brother and the two sons of his brother who were the defendants. The son of the testator died having survived his mother by a few days. The eldest daughter died in the lifetime of her mother leaving a daughter who died unmarried. The plaintiffs were the two surviving sons of the other daughter of the test-

HINDU LAW—WILL—*contd.*

ator. The testator by his will had made his minor son the *malik* of all his properties. The will provided that he should succeed to and enter upon possession and occupation of the whole of his estate and appointed the widow as the manager and legal guardian of the infant son. After providing for the management of the property during the son's minority the will provided—"If after my death the said minor son dies, the mother of the said son shall in his stead become the *malik* in possession and occupation when like myself the said Musammat shall acquire all the proprietary powers and all kinds of properties, moveable and immoveable, and after the death of the widow the property was to go to the testator's two daughters in equal shares." *Held*, that the gift-over in favour of the widow in the event of the son dying without having attained majority was not a void gift as being repugnant to the form of the gift that was previously made in favour of the son. The provisions of the Indian Succession Act rendered such a gift perfectly good. That s. 16 of the Succession Act which merely incorporated the rules of the English Law provides clearly that the gift-over shall take effect on the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator. The mere fact that the testator contemplated that if his son died a minor and the widow survived him, she would acquire the property before the two daughters and that that event did not take effect in that order, because the widow predeceased the son did not deprive the daughters of the benefit of the legacy given to them by the testator. The gift in favour of the daughters was a valid bequest to them and the defendants, who claimed as being the next heirs of the testator's son, had no interest in the estate of the testator. DURGA PERSHAD *v.* RAGHUNANDAN LAL (1914) **19 C. W. N. 439**

4. ——— *Construction—Indian Succession Act (X of 1865), s. 111, rule of construction in—Legacy with power to sell, make a gift, etc., in respect of properties bequeathed, if absolute gift to legatee.* A Hindu in his will provided as follows:—"I bequeath to both of you (the testator's widow and his brother's daughter) the rest of the properties . . . You will become entitled to sell or make a gift or *heba*, etc., in respect of the said properties and hold and enjoy the same . . . If by the will of God one of you should die before the other, whoever will survive will hold and enjoy the whole of the property as *malik*." *Held*, that the case fell within s. 111 of the Indian Succession Act and the widow not having predeceased her husband and having survived the period of distribution took an absolute interest under the will. That the ordinary rule of construction when the testator has given an absolute gift to a legatee and then has made a gift-over *simpliciter* on a contingency of death is that he was referring to death before the period of distribution. This is clearly provided for in s. 111 of the Indian Succession Act

HINDU LAW—WILL—*contd.*

which applies to Hindu wills. The rule in this section is an absolute rule of construction and not a rule of construction which may be contradicted by other evidence appearing on the face of the will. NISTARINI DEBYA *v.* BEHARY LAL MUKHERJEE (1914) . . . **19 C. W. N. 52**

5. ——— *Execution of a will by a Hindu widow—Suit for declaration by reversioner—Cause of action—Whether suit maintainable.* A Hindu widow executed a will and thereby bequeathed her husband's property in her hands to a certain person purporting to do so under the oral directions of her husband. The next reversioner brought this suit for a declaration that the will in question was void and inflectual as against his interest. *Held*, that the mere execution of the will did not afford a sufficient reason for granting a declaratory decree. *Ram Bhajan* v. *Gurcharan, 1 All. L. J. R. 468*, followed, *Jaipal Kunwar* v. *Indar Bahadur Singh, I. L. R. 26 All. 238*, referred to. UMRAO KUNWAR *v.* BADRI, (1915) **I. L. R. 37 All. 422**

6. ——— *Will—Birth of a son subsequent to the execution of the will, effect of,—Death of the son before the testator—No revocation of the will under the Indian law—Revocation under the old English law prior to Wills Act—Statutory law in India—Indian Succession Act (X of 1865), s. 57—Probate and Administration Act (V of 1881), s. 4.* A will, executed by a Hindu testator disposing of his ancestral property, is not revoked in law by reason of the birth subsequent to the execution of the will of a son who died before the testator. The rule of English law that it was essential to the validity of a devise of freehold lands that the testator should be seized thereof at the making of the will, and that he should continue so seized without interruption until his decease, is no longer in force in England in consequence of the enactment of the Wills Act. The principle applicable in India is that adopted in the English Wills Act that a will has the same effect as if it were executed at the time of the testator's death. The statutory law of wills in India has not adopted the principle that a will should be deemed to be revoked in consequence of a change in the circumstances of the testator or a change with respect to his rights to the property disposed of by the will. (*See* s. 57 of the Indian Succession Act). Survivorship has the effect of rendering a will invalid only with respect to the property which the testator could not dispose of at the time of his death. All other dispositions made by him are valid. *Shib Sabitri Prasad* v. *The Collector of Meerut, I. L. R. 29 All. 82*, and *Subba Reddi* v. *Doraisami Bathan, I. L. R. 30 Mad. 369*, followed. BODI *v.* VENKATASAMI NAIDU (1913) . . . . **I. L. R. 38 Mad. 369**

7. ——— *Ancestral moveable property—Will—Bequest—Bequest by Co-parcener.* One Pandharinath Ramchandra, a Hindu testator made a will by which he directed that Rs. 2,001 should be paid to each of his three daughters out of the ancestral moveable property. He died

HINDU LAW—WILL—*contd.*

leaving a son surviving him. In a suit by one of the daughters to recover amount of the legacy from the estate of the testator: *Held*, that the legacies were directed to be paid by the testator out of property which he had no power to dispose of by will. *Vittla Butten* v. *Yamenamma, I. L. R. 8 Mad. H. C. R. 6*, followed. *Hanmantapa* v. *Jivubai, I. L. R. 24 Bom. 547*, distingnished and *Bachoo* v. *Mankorebai, I. L. R. 29 Bom. 51*, and *I. L. R. 31 Bom. 373*, distinguished. PARVATIBAI *v.* BHAGWANT VISHWANATH PATHAK (1915)

I. L. R. 39 Bom. 593

8. ——— *Will giving power to widow to adopt with consent of trustees where one declines to act.* A Hindu testator by his will appointed five trustees of his property and gave power to his widow to adopt a son with their consent and advice; and one of the trustees declined to act. *Held*, that the consent of the declining trustee was not necessary, and the adoption made with the consent of the other four trustees was valid. BAL GANGADHAR TILAK *v.* SHRINIVAS PANDIT (1915)

I. L. R. 39 Bom. 441

9. ——— *Probate application for—Locus standi to oppose—Mitakshara father, will by, in favour of widowed daughter—Widow of predeceased son if may contest will, when no ancestral property —Right to maintenance against devisee—Provision in will, if may be referred to.* Where there is no ancestral property, a Hindu, governed by the Mitakshara law, is ordinarily under no legal obligation to maintain his predeceased son's widow. His obligation is merely a moral or an imperfect obligation which however ripens into a legal obligation on the part of the heir who gets his estate after his death. *Devi Proshad* v. *Gunwanti Koer, I. L. R. 22 Calc. 410*, and *Siddeshury Dasi* v. *Jonardan Sarkar, 6 C. W. N. 530 : s. c. I. L. R. 29 Calc. 557*, referred to. *Quœre:* Whether such a right can be enforced against a devisee of the entire estate under a will executed by the father-in-law. *Held*, that as the daughter-in-law's right to maintenance which could have been enforced in case of intestacy would be taken away by the will, she ought to be allowed to appear and oppose the grant of probate of the will. Where the right to maintenance is enforceable against the devisee. *Quœre:* Whether the claimant of maintenance has sufficient interest to oppose the grant of probate in all cases. *In the goods of Sarat Chunder Patro, 2 C. W. N. cclvi (1898)*, *Garabini Dassi* v. *Pratap Chandra, 4 C. W. N. 602*, and *In the goods of Gobinda Chandra Babajee, 17 C. W. N. 1141*, referred to. The provisions of the will may be looked at to see if the will really affects the right to maintenance. Where the will of the father-in-law directed that all the properties should be sold and a certain sum of money paid to the widowed daughter-in-law and after payment of certain legacies, the balance was to be appropriated by his widowed daughter who was not his heir. *Held*, that in this case

HINDU LAW—WILL—*concld.*

the will seriously affected the interest of the daughter-in-law and she had sufficient interest to oppose the grant of probate. *Garabini Dassi* v. *Pratap Chandra, 4 C. W. N. 602*, referred to. INDUBALA DASI *v.* PANCHUMANI DAS (1914)

19 C. W. N. 1169

HINDU LAW—WOMAN'S ESTATE.

1. ——— *Woman's Estate—Hindu widow, debts contracted by, for costs of litigation—Binding effect on reversioner—Legal necessity—Facts necessary to be proved by lender—Rate of interest must be proved necessary even when legal necessity for loan exists.* The plaintiff, who was an assignee of a mortgage executed by a Hindu widow in respect of her husband's property, of which she was in possession as a Hindu widow, sued to enforce the mortgage against the property in the hands of the reversionary heir, and it appeared that the money was borrowed for meeting the costs of litigation relating to certain suits brought by certain ex-managers of the estate for salary and it appeared that at the time the money was borrowed a portion of the estate was sold in execution of a decree obtained by one of the ex-managers and other properties were going to be sold in execution of another decree obtained by him and there was a heavy claim against the estate by another manager: *Held*, that the debts contracted by a Hindu widow for meeting the costs of litigation in defending her life-estate in her husband's property or for protecting the estate are binding upon the estate in the hands of the reversioner. That it was not necessary for the lender in the present case to show that the debt, which was in litigation, for meeting the costs of which he lent the money to the widow, was or was not her personal debt. It is sufficient, if it is shewn that there was pressure upon the estate, that there was necessity for borrowing money for the costs of the litigation or that the creditor made reasonable enquiries and was satisfied of the necessity for the loan. That although a loan by a widow may be necessary, the rate of interest at which she borrowed must be proved to be necessary before interest at that rate can be allowed. STEVENS *v.* JANKI BALLABH (1913). **19 C. W. N. 80**

2. ——— *Woman's Estate—Decree against Hindu widow and next reversioner in respect of obligation personal to widow, if binds reversion—Mortgage by widow and next reversioner, if binds reversion.* A sale of property inherited by a Hindu woman in execution of a decree for costs obtained against her personally does not bind the reversioners. *Jugal Kishore* v. *Jotindra Mohan, I. L. R. 10 Calc. 985, 991*, followed. The fact that the decree was obtained against her and the next reversionary heir jointly does not give the purchaser anything more than the qualified interest of the woman. A mortgage of a portion of the inheritance in the hands of a Hindu woman executed by her jointly with next reversioner does not necessarily bind the

HINDU LAW—WOMAN'S ESTATE—*contd.*

reversionary interest. It merely raises a presumption that the mortgage was entered into for legal necessity. *Debi Prosad* v. *Golap Bhagat, 17 C. W. N. 701*, referred to. NABIN CHANDRA SAHA *v.* HEM CHANDRA RAY (1913) **19 C. W. N. 265**

3. ——— *Woman's estate—Hindu widow, alienation by—Rent of superior landlord—Legal necessity—Suit against Hindu widow—Reversioner whether necessary party—What passes at a sale in execution of a decree against Hindu widow—Limitation Act (XV of 1877), Sch. II, Arts. 141, 120—Specific Relief Act (I of 1877), s. 42.* The powers of a Hindu widow in respect of alienation of the estate of her husband are similiar to those of the guardian of an infant *Hunooman Persad* v. *Babooee Moonraj, 6 Moo. I. A. 393; 18 W. R. 81, Kameswar* v. *Run Bahadur L. R. 8 I. A. 8: s. c. I. L. R. 6 Calc. 843, Lala Amarnath* v. *Achhan Kuer, L. R. 19 I. A. 196: s. c. I. L. R. 14 All. 420*, and *Bhagwat Dyal* v. *Debi Dyal, 12 C. W. N. 393: s. c. L. R. 35 I. A. 48; I. L. R. 35 Calc. 420*, followed. The mere fact that money is raised for payment of rent and applied for that purpose is not sufficient to prove legal necessity. The creditor to protect himself where he is not shown to have made a *bonâ fide* enquiry must prove that there was an actual pressure on the estate, such as an outstanding decree or an impending sale which the widow is not capable of meeting. *Lala Amarnath* v. *Achhan Kuer, L. R. 19 I. A. 196: s. c. I. L. R. 14 All. 420, Dharamchand* v. *Bhaoani Misrain, L. R. 24 I. A. 183: s. c. I. L. R. 25 Calc. 189; 1 C. W. N. 697, Sreenath* v. *Rutunmala, Beng. S. D. A. 421 (1859), Srimohun* v. *Brij Behary, I. L. R. 36 Calc. 753, Lala Byjnath* v. *Bissen, 19 W. R. 80, Mata Pershad* v. *Rhageeruthee, 2 All. H. C. R. 78, Ghanshyam* v. *Badiyalal, I. L. R. 24 All. 547*, and *Lakshman* v. *Radha Bai, I. L. R. 11 Bom. 609*, followed. Where a Hindu widow obtains a loan, she is at liberty to bind herself personally or when the purpose for which she borrows is a necessary one, she is at liberty to bind her husband's estate and the intention must be gathered from the statement if any in the deed or from the surrounding circumstances. *Damodar* v. *Jankibai*, 5 Bom. *L. R. 350*, and *Prosunna* v. *Umedar Raja, 13 C. W. N. 353*, referred to. A decree for rent which has accrued due after the death of her husband is *primâ facie* a personal decree against the widow, *Jibankrishna* v. *Brajalal,, I. L. R. 30 Calc. 550: s. c. 7 C. W. N. 425, Kristo Gobind* v. *Hem Chandra, I. L. R. 16 Calc. 511, Mohammed Sadat Ali* v. *Harasundari, 16 C. W. N. 1070*, and *Bireswar* v. *Kamal Kumar 17 C. W. N. 337*, followed. The mere fact that the widow intended to create a liability on the estate is not enough. The creditor has also to show that he intended to enforce such liability and the true test is to see whether the proceeding in which the sale was directed was brought against the widow personally or with a view to affect the whole inheritance. *Jugal* v. *Jotendra, L. R. 11 I. A. 66: s. c. I. L. R. 10 Calc.*

HINDU LAW—WOMAN'S ESTATE—*concld.*

985, Court of Wards v. *Ramaput Singh, 14 Moo. I. A. 605, Srinath* v. *Hari, 3 C. W. N. 637, Ramlal* v. *Akhoy, 7 C. W. N. 619, Radha Kishen* v. *Naurotan Lal, 6 C. L. J. 490, Braja* v. *Joggeswar, 9 C. L. J. 346, Kistomoyee* v. *Prosunno, 6 W. R. 304, Bisto Beharee* v. *Byjnath, 16 W. R. 49, Baijun* v. *Brij Bhookan, L. R. 2 I. A. 275: s. c. I. L. R. 1 Calc. 133, Bireswar* v. *Kamal Kumari 17 C. W. N. 237, Sadat Ali* v. *Harasundari, 16 C. W. N. 1070*, and *Trilochan* v. *Bakkeswar, 15 C. L. J. 423*, referred to. It is not necessary that a reversioner should be joined as party to the suit, but if he is so joined, the fact would afford clear indication that the creditor intended to make the inheritance liable. *Bhagarathi Das* v. *Baleswar Bagerti, 19 C. L. J. 155: s. c. 17 C. W. N. 877; I. L. R. 41 Calc. 69, Mohima Chandra* v. *Ramkishore, 23 W. R. 174; 15 B. L. R. 142, Srinath Dass* v. *Haripada, 3 C. W. N. 637, Nugendra* v. *Kamini 11 Moo. I. A. 241, 267*, and *Lloyd* v. *Jones, 9 Ves. 37*, 57, referred to. RAMESWAR MONDAL *v.* PROVABATI DABI (1914). **19 C. W. N. 313**

4. ——— *Woman's Estate—Sradh expenses of widow of last holder, liability of reversioner to contribute.* The reasonable expenses of *sradh* of a widow of a deceased Hindu should be paid out of the estate in the hands of the reversioners and the reversioners who inherit the estate should contribute rateably towards such expenses. RAMDHARI SINGH *v.* PERMANUND SINGH (1913) **19 C. W. N. 1183**

HINDU WIDOW.

See GUARDIAN. **I. L. R. 42 Calc. 953**

See HINDU LAW—WIDOW.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 125 AND 120. **I. L. R. 37 All. 195**

——— **alienation by—**

See HINDU LAW—ALIENATION. **I. L. R. 42 Calc. 876**

HOLDING.

——— **sale of—**

See ESTATES LAND ACT (MAD. I OF 1908), S. 111, *et seq.* **I. L. R. 38 Mad. 1042**

——— **surrender or abandonment of—**

See MADRAS ESTATES LAND ACT (I OF 1908) S. 8. **I. L. R. 38 Mad. 608**

HOMESTEAD LAND.

——— *Suit for rent—Jurisdiction—Protected under-tenure—Revenue Sale Act (XI of 1859) s. 37 cl. (4) —Garden—Incumbrances, annulment of, on sale of taluk for arrears of revenue—Provincial Small Cause Courts Act (IX of 1887) Sch. II, Art. 8—Second appeal—Civil Procedure Code (Act V of 1908) s. 102.* S. 102 of the Civil Procedure Code is no bar to second appeals in suits for rent other than house rent although the value thereof does not

HOMESTEAD LAND—*concld.*

exceed Rs. 500 : *vide* Art. 8 of Schedule II of the Provinicial Small Cause Courts Act. *Soundaram Ayyar* v. *Sennia Naickan, I. L. R. 23 Mad. 547,* distinguished. When land ceased to be garden-land about a quarter of a century ago, and tenants have been settled on the land since then, the tenure is not protected and does not fall within the 4th exception to s. 37 of the Revenue Sale Act (XI of 1859) and is liable to be annulled. The effect of a sale is not *ipso facto* to avoid under-tenures ; the purchaser has the option of avoiding them or keeping them intact. *Titu Bibi* v. *Mohesh Chander Bagchi, I. L. R. 9 Calc. 683,* followed. It is necessary therefore that the purchaser must by some unequivocal act indicate his intention to avoid under-tenures if he desires to do so and the election of the purchaser to avoid must be brought to the knowledge of the under-tenure holder. A formal written notice is not essential. *Dursan Singh* v. *Bhawani Koer, 17 C. W. N. 984,* followed and explained. The facts, that the purchaser demanded rents from the tenants to the knowledge of the under-tenure holder, sued the tenants for *rent,* took out warrants of attachment in execution of decrees and realized rents from the tenants in repudiation of the under tenure-holder's title, go to show that the under tenure-holder had not only notice of unequivocal acts on the part of the purchaser indicating his election to avoid the *mokarrari* but the purchaser had in fact obtained possession of the estate. *Mir Waziruddin* v. *Deoki Nandan, 6 C. L. J. 472,* distinguished. *Per* N. R CHATTERJEA J. The mere fact that a garden was made on a piece of land a quarter of a century before the sale, would not make it land on which a garden has been made for all time to come. *Per* BEACHCROFT, J. No particular method of expressing an intention to annul an under-tenure is necessary. There must be established (*i*) a definite intention to annul, (*ii*) an indication of that intention to the under-tenure-holder. To afford protection the work must *still be in existence* or the land be used for the purpose of the work. The perfect tense in "leases of land whereon . . . gardens *have* been made" denotes a present state. *Obiter :* If the *busti* land is covered by the lease of the land on which the mill stands, or if the *busti* is an integral part of the mill, and exists only for the purposes of the mill, it is possible that it might be protected. SAHADORA MUDIALI *v.* NABIN CHAND BORAL (1914). . . **I. L. R. 42 Calc. 638**

HONORARY SECRETARY.

See DECLARATORY SUIT.
I. L. R. 37 All. 313

HOROSCOPE.

——— **admissibility of—**

See HINDU LAW—MINOR.
I. L. R. 38 Mad. 166

HORSE.

——— *Suit for damages for injury done by vicious horse—Liability of owner*

HORSE—*concld.*

—Absence of negligence on owner's part if can exonerate him when he knew of the animal's vice. The plaintiff sought to recover damages for injuries suffered by reason of his having been bitten by the defendant's horse. The finding was that the horse was a vicious animal and it did bite the plaintiff but that the defendant was not guilty of negligence and on this ground the lower Court dismissed the suit. *Held,* that if the horse was a vicious animal and if that fact was known to the defendant and knowing this he kept the horse and if it injured the plaintiff, then the defendant must be held liable notwithstanding that he was not guilty of negligence. Negligence is not a necessary ingredient in a suit of this nature. GANDA SINGH *v.* CHUNI LAL SHAHA (1915). **19 C. W. N. 916**

HUNDI.

See PENAL CODE (ACT XLV OF 1860), S. 405. . . **I. L. R. 38 Mad. 639**

HUNDI SHAH JOG.

——— *Payment to the Shah—Fraudulent hundi—Duty of Shah to trace the drawer—Payment of hundi not as Shah but as indorsee for collection of the hundi—Custom of Marwari merchants—In case of fraud, notice, when to be given—Laches.* On the 10th June 1912 the defendants presented to the plaintiff for payment a hundi for Rs. 3,000 purporting to be drawn by one R in favour of M on the plaintiff payable at sight to a *Shah.* The plaintiff having had no advice regarding the said hundi refused to pay the said sum of Rs. 3,000. On the next day the plaintiff received a letter purporting to be written by R from Harpalpur, enclosing a railway receipt for 300 bags of linseed, stated to have been consigned by R from Ranipur Station, and asking the plaintiff to sell the goods and in the meantime to accept and pay on presentment two hundis, each for Rs. 3,000 drawn by R in favour of M on the plaintiff, payable at sight to a *Shah.* The same day the plaintiff handed over the said railway receipt to one K and received payment of Rs. 5,600. The plaintiff thereupon paid Rs. 3,000 together with one day's interest to the defendants in respect of the hundi which had been presented by the defendants to the plaintiff on the previous day as aforesaid and which was one of the hundis mentioned in the letter. The goods referred to in the railway receipt never arrived and K returned the said receipt to the plaintiff and was repaid the sum of Rs. 5,600. On inquiries being instituted it was found that no such person as R existed and that the hundi and the railway receipt were forged. The plaintiff sued to recover the money from the defendants relying on the custom prevailing among Marwari Merchants that the Shah who obtained payment of a Shah Jog hundi was, in the event of the hundi turning out to be a false, fraudulent, stolen, or forged hundi, bound to refund the amount of the hundi with interest unless he "traced it to its source," *i. e.,* produced the actual drawer or the

HUNDI SHAH JOG—*concld.*

person who committed the fraud. *Held*, (*i*) that the defendants had been paid not as Shah but as indorsee for collection of a hundi purporting to be drawn against the security of a railway receipt. (*ii*) Assuming that there might be a liability imposed on the defendants by reason of the payment, to refund or to trace the hundi to its source, this would only be the case provided notice was given within reasonable time of the discovery of the forgery, that is, provided the plaintiff lost no time in making this communication and claiming the refund. (*iii*) That the hundi had been "traced to its source" within the meaning of the Marwari Association Rules before the defendants received information of the fraud. R. D. SETHNA *v.* JWALAPRASAD GAYAPRASAD (1914). . . **I. L. R. 39 Bom. 513**

HOUSE SEARCH.

See PENAL CODE (ACT XLV OF 1860), SS. 332, 323. . **I. L. R. 37 All. 353**

HURT.

See PENAL CODE (ACT XLV OF 1860), SS. 337, 338. **I. L. R. 39 Bom. 523**

HUSBAND AND WIFE.

See HINDU LAW—HUSBAND AND WIFE.

HUSBAND'S ESTATE.

——— **right to get maintenance from—**

See HINDU LAW—MAINTENANCE.
I. L. R. 38 Mad. 153

HYPOTHECATION.

See STAMP ACT (II OF 1899), S. 2 (*17*), ETC. . . **I. L. R. 38 Mad. 646**

I

IDENTITY OF TRANSACTION.

See MISJOINDER OF CHARGES.
I. L. R. 42 Calc. 1153

IJMALI SHARE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 42 Calc. 897

ILLEGAL COMPOSITION.

See UNDUE INFLUENCE.
I. L. R. 42 Calc. 286

ILLEGITIMATE CHILDREN.

——— **right of—**

See HINDU LAW—INHERITANCE.
I. L. R. 38 Mad. 1144

IMMORAL CUSTOM.

——— **of caste—**

See HINDU LAW—MARRIAGE.
I. L. R. 39 Bom. 538

IMMOVEABLE PROPERTY.

——— **sale of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89.
I. L. R. 38 Mad. 775

IMPARTIBLE ESTATE.

See HINDU LAW—INHERITANCE.
I. L. R. 42 Calc. 1179

IMPROVEMENTS.

See LANDLORD AND TENANT.
I. L. R. 38 Mad. 710

See MALABAR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900), SS. 3 AND 5.
I. L. R. 38 Mad. 954

INADEQUACY OF PRICE.

See SALE FOR ARREARS OF REVENUE.
I. L. R. 42 Calc. 897

INALIENABILITY.

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 91.
I. L. R. 38 Mad. 321

INAM.

See MADRAS REGULATION (XXV OF 1902), S. 4.
I. L. R. 38 Mad. 620

INAM AUTHORITIES.

——— **duties of—**

See LANDLORD AND TENANT.
I. L. R. 38 Mad. 155

INAM SETTLEMENT.

See LANDLORD AND TENANT.
I. L. R. 38 Mad. 155

INAMDAR.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8 (EXCEP.)
I. L. R. 38 Mad. 608, 891

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 13.
I. L. R. 39 Bom. 131

INAMDAR AND RYOT.

See MADRAS ESTATES LAND ACT (I OF 1908) . . **I. L. R. 38 Mad. 33**

INAMDAR AND ZAMINDAR.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8, ETC.
I. L. R. 38 Mad. 608

INCAPACITY.

——— **to make a will—**

See HINDU LAW—MINOR.
I. L. R. 38 Mad. 166

INCOME TAX.

——— *Executor's, liability to income tax—Suit, maintainability of, for declaration of nonliability to tax—Collector, jurisdiction of, to assess income tax—Income Tax Act (II of 1886)*—

INCOME TAX—*concld.*

Contract Act (IX of 1872), s. 72. Income accruing to an executor under the will of a testator is 'income' as defined in s. 3, cl. (5) of the Income Tax Act, 1886, and is liable to be taxed under the Act. It is the Collector's duty to determine what persons are chargeable in respect of sources of income other than salaries and pensions, profits of companies and interest on securities. A suit brought by an executor of an estate for a declaration that as executor he was not liable to pay income tax in respect of any income of the estate and that the Collector, in realizing the sums paid to him, acted without jurisdiction, and for a decree for the amount so paid with interest, does not lie. Payment of income tax by the executor of an estate, under protest, on the ground that as executor no tax was payable by him, may be regarded as paid under coercion within the meaning of s. 72 of the Contract Act, *Kanhaya Lal* v. *National Bank of India, Ld. I. L. R. 40 Calc. 598; L. R. 40 I. A. 56*, referred to. FORBES *v.* SECRETARY OF STATE FOR INDIA (1914). **I. L. R. 42 Calc. 151**

INCOME TAX ACT (II OF 1886).

See INCOME TAX. **I. L. R. 42 Calc. 151**

INCUMBRANCE.

See HOMESTEAD LAND. **I. L. R. 42 Calc. 638**

INCURABILITY.

See HINDU LAW—INHERITANCE. **I. L R. 38 Mad. 250**

INDIAN HIGH COURTS ACT (24 & 25 VICT. c. 104).

See HIGH COURTS ACT.

——— **s. 15—**

See MADRAS CITY MUNICIPAL ACT (III OF 1904) . . **I. L. R. 38 Mad. 581**

INDIAN MARINE SERVICE.

See SERVICE OF SUMMONS. **I. L. R. 42 Calc. 67**

INFANT.

See MAHOMEDAN LAW—MARRIAGE. **I. L. R. 42 Calc. 351**

INFRINGEMENT.

See TRADE MARK. **I. L. R. 37 All. 446**

INHERITANCE.

See HINDU LAW—INHERITANCE. **I. L. R. 42 Calc. 384, 1179**

See HINDU LAW—INHERITANCE. **I. L. R. 38 Mad. 1144**

See OCCUPANCY HOLDING. **I. L. R. 42 Calc. 254**

——— **by mortgagor of decree for sale on prior mortgage—**

See MORTGAGE . **I. L. R. 37 All. 309**

INHERITANCE—*concld.*

——— **right of women to—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3. **I. L. R. 38 Mad. 850**

INJUNCTION.

See CIVIL PROCEDURE CODE (1908), S. 94, O. XXXVIII, R. 5; O. XXXIX, R. 1. **I. L. R. 37 All. 423**

See MINE . . **19 C. W. N. 887**

See MUNICIPAL COUNCIL. **I. L. R. 38 Mad. 6**

1. ——— *Limitation—Suit for damages for obtaining perpetual injunction maliciously and without reasonable cause—Limitation Act (IX of 1908), Sch. I, Art. 42.* No suit lies for damages against a defendant for, maliciously and without reasonable or probable cause, obtaining a perpetual injunction which was subsequently dissolved on appeal. *Nand Coomar Shaha* v. *Gour Sunkar, 13 W. R. 305*, doubted, *Quartz Hill Mining Co.* v. *Eyre, 11 Q. B. D. 690, Smith* v. *Day, 21 Ch. D 421, Hari Nath Chatterjee* v. *Mothur Mohun Goswami, I. L. R. 21 Calc. 8; L. R. 20 I. A. 188, Chander Cant Mookerjee* v. *Ram Coomar Coondoo, 22 W. R. 138, Cotterell* v. *Jones, 11 C. B. 713, Turner* v. *Ambler, 10 Q. B. 252*, referred to. Under Art. 42, Sch. I of the Limitation Act (IX of 1908) time begins to run from the date when the injunction ceases. MOHINI MOHAN MISSER *v.* SURENDRA NARAYAN SINGH (1914) . . . . **I. L. R. 42 Calc. 550**

2. ——— *Temporary Injunction when should be granted—Status quo, maintenance of—Indian High Courts Act (24 & 25 Vict., c. 104), s. 15—Jurisdiction of 'the High Court' to interfere.* The plaintiffs were some of the superior landlords of the disputed property which consisted of two plots of land and claimed to have been in direct possession of about one-third of the property. The defendants who were in occupation of the remainder being alleged to have obtained a permanent lease from some of the co-sharers of the plaintiffs commenced to dig the foundations for an extension of their factory house. The plaintiffs sued for partition and applied for a temporary injunction. The defendants notwithstanding notice of the application for injunction expedited the erection of the building. It appeared that on partition the plaintiffs could not conveniently be allowed any share of one of the plots, but must be limited to an allotment out of the other plot. *Held*, that there was a substantial question in controversy between the parties and pending its determination the *status quo* should be maintained to the necessary extent. That it was desirable that the plot a share of which only could be allotted to the plaintiff on partition should be retained in *status quo* so that the Court might be free to grant such relief as it mght think proper and an injunction should be granted restraining the defendants from

INJUNCTION—*concld.*

building on this plot for a period of one month during which the partition suit was to be tried out. That it was open to the High Court to give the necessary directions under s. 15 of the Indian High Courts Act and in a case of this description it was essential that the High Court should interfere to prevent what might otherwise place one of the litigating parties in an unfairly advantageous position and thus turn out in the end to be the cause of an irremediable injustice to the other. HEMANTA KUMAR ROY *v.* BARANAGORE JUTE FACTORY CO. (1914).

19 C. W. N. 442

INJUNCTION AND DECLARATION.

See DECLARATION, ETC.

I. L. R. 38 Mad. 922

INJURY.

See CRIMINAL PROCEDURE CODE, SS. 345 AND 439 . **I. L. R. 37 All. 419**

INQUIRY.

See CRIMINAL PROCEDURE CODE, SS. 107 AND 117. . **I. L. R. 37 All. 30**

——— **order passed without—**

See LIMITATION ACT (IX OF 1908), S. 28, ART. 47 . **I. L. R. 38 Mad. 432**

INSOLVENCY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXII, R. 10.

I. L. R. 39 Bom. 568

See INSOLVENCY ACT (III OF 1907).

See LIMITATION ACT (XV OF 1877). SCH. II, ART. 179.

I. L. R. 39 Bom. 20

See MINOR . **I. L. R. 42 Calc. 225**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 36 . **I. L. R. 37 All. 252**

——— **of partner—**

See MINOR . **I. L. R. 42 Calc. 225**

——— **transfer of petition for—**

See PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), S. 90.

I. L. R. 38 Mad. 472

1. ——— *Attachment under Mortgage decree and order for sale of mortgaged property—Vesting order under s. 7 of Insolvency Act (II & 12 Vict., c. 21), effect of—Sale after vesting order—Sale by Official Assignee to plaintiff—Title of purchaser from Official Assignee as against judgment-creditor purchasing at sale in execution of his own decree—Notice.* An attachment in execution of a money-decree on a mortgage of land, followed by an order for sale of the interest of the judgment-debtor does not create any charge on the land. *Sarkies* v. *Bundhoo Baee, 1 N. W. P. 172*, referred to. An attachment prevents and

INSOLVENCY—*contd.*

avoids any private alienation, but does not invalidate an alienation by operation of law such as is effected by a vesting order under the Indian Insolvency Act (11 & 12 Vict. c. 21); and an order for sale though it binds the parties does not confer title. Previous to the 8th September 1904 a colliery leased to the judgment-debtors was attached under a mortgage decree by the respondents (judgment-creditors), and an order for sale on 5th September was made, but at the request of the judgment-debtors the sale was postponed until the 10th. On 8th September the judgment-debtors filed their petition in the Insolvency Court in Calcutta and the usual vesting order was made on the same day. On 12th September the execution proceedings were stayed. After issue of notice, on the application of the respondents, to the Official Assignee to show cause why he should not be substituted in the place of the judgment-debtors, the Subordinate Judge on 10th January 1905, finding that the notice had been duly served, made the order for substitution and fixed the sale for 6th March 1905, on which day the property was sold, and purchased by the respondents who in June were put into possession. Meanwhile on 23rd May 1905 the Official Assignee with leave from the Insolvency Court in March 1908 sold the property to a purchaser, who on 24th June 1908 sold it to the plaintiffs by whom on 16th July 1908 the present suit was brought for possession of the colliery. *Held* (reversing the decision of the High Court), that the notice calling on the Official Assignee to show cause why he should not be substituted for the judgment-debtors was not a proper notice under s. 248 of the Civil Procedure Code, 1882. A notice under that section should have called on him to show cause why the decree should not be executed against him. But assuming the notice to have been duly served (which was denied) the sale was altogether irregular and inoperative. The property having vested in the Official Assignee it was wrong to allow the sale to proceed at all. The judgment-creditors had no charge on the land, and the Court could not properly give them such a charge at the expense of the other creditors of the insolvents. In the second place, no proper steps had been taken to bring the Official Assignee before the Court and obtain an order binding on him, and accordingly he was not bound by anything which had been done. In the third place, the judgment-debtors had, at the time of the sale, no right, title or interest which could be sold to or vested in a purchaser, and consequently the respondents acquired no title to the property. *Malkarjun* v *Narhari, I. L. R. 25 Bom. 337*; *L. R. 27 I. A. 216*, distinguished. No proper notice was served under s. 248 of the Civil Procedure Code, and the respondents had full notice, and were responsible for the irregularities of the procedure adopted. RAGHUNATH DAS *v.* SUNDAR DAS KHETRI (1914)

I. L. R. 42 Calc. 72

2. ——— *Interim Receiver —Insolvent's money, attachment of, before the ad-*

INSOLVENCY—*concld.*

judication order—Provincial Insolvency Act (III of 1907), s. 13, cl. (2), s. 16, cl. (6), s. 34, cl. (1)—Bankruptcy Act of 1883 (46 & 47 Vict., c. 52), s. 40. An *interim* receiver is appointed for the protection of the estate of the debtor for the benefit of the entire body of creditors. *Ex parte Fox, L. R. 17 Q. B. D 4,* referred to. Cl. (1) of s. 34 of the Provincial Insolvency Act restricts the operation of s. 16, clause (6) thereof. A creditor, who had attached a sum of money due to the insolvent before his estate vested in the receiver appointed after the adjudication order, is entitled to apply it exclusively in satisfaction of his debt. MADHU SARDAR *v.* KHITISH CHANDRA BANERJEE (1914) **I. L. R. 42 Calc. 289**

3. ———— *Practice—Presidency Towns Insolvency Act (III of 1909), s. 36, (4), (5), whether applicable to contentious matters.* S. 36 (4) and (5) of the Presidency Towns Insolvency Act, 1909, is intended to provide a summary procedure for ordering payment of debts due, and delivery of property belonging to an insolvent, where there is no dispute; it is not intended for contentious matters or for following property the subject of fraudulent preference or dishonest concealment. *In re* J. M. LUCAS AND ANOTHER (1914) . . . . **I. L. R. 42 Calc. 109**

INSOLVENCY ACT (11 & 12 VICT. c. 21).

———— s. 7—

See INSOLVENCY . **I. L. R. 42 Calc. 72**

———— s. 86—*Judgment entered up under the above section—Insolvent absent.* After due notice being served by the Official Assignee, an insolvent failed to appear at the hearing. Judgment was entered up against the insolvent under section 86 of the Indian Insolvents Act. *In re* BALCHAND SURANA (1914). . . . **19 C. W. N. 433**

INSOLVENT.

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 18, 36 AND 47.
I. L. R. 37 All. 65

INSTALMENT BOND.

See LIMITATION . **I. L. R. 38 Mad. 374**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 132 . **I. L. R. 37 All. 400**

———— *Consent not to sue on failure to pay instalment, if would amount to waiver—Limitation Act (IX of 1908), Sch. 1, Art. 75.* Waiver is consent to dispense with or forego something to which a person is entitled. Where it was proved that demand was made in three successive years in respect of three instalments due upon an instalment bond, but the plaintiff consented not to sue for the whole amount as he was entitled to do under the bond for default on the first two occasions but refused to consent on the third: *Held,* that this amounted to a waiver of the payment of the two earlier instalments. When the instalment bond was executed on the 6th of November 1908 and provided payment of Rs. 10,000 by

INSTALMENT BOND—*concld.*

annual instalments of Rs. 400, commencing from the 30th of September 1909, and further that in case of default the whole amount payable on the bond was to fall due and the plaintiff waived the payment of the first two instalments as aforesaid and filed a suit for the recovery of the whole amount on the 12th of November 1914: *Held,* that his suit was not barred by limitation and it was decreed for Rs. 9,200. RAM CHUNDER BANKA *v.* RAWATMULL (1915).
19 C. W. N. 1172

INSTALMENTS.

———— default in payment of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 48 . **I. L. R. 39 Bom. 256**

INSTRUMENT.

See ATTESTATION OF INSTRUMENT
I. L. R. 37 All. 350

INTANGIBLE PROPERTY.

See PALAS OR TURNS OF WORSHIP.
I. L. R. 42 Calc. 455

INTENT.

See PENAL CODE (ACT XLV OF 1860) S. 456 . . **I. L. R. 37 All. 395**

INTENT AND KNOWLEDGE.

See PENAL CODE (ACT XLV OF 1860), S. 86. . **I. L. R. 38 Mad. 479**

INTEREST.

See MORTGAGE . **I. L. R. 42 Calc. 1146**

See SLAVERY BOND.
I. L. R. 42 Calc. 742

———— liability of trustee for—

See TRUSTEE . **I. L. R. 38 Mad. 71**

1. ———— *Contract Act (IX of 1872), ss. 16, 74—Undue influence, presumption of—Penalty—Excessive and usurious interest—Duty of the Court.* Where there is ample security, the exaction of excessive and usurious interest in itself raises a presumption of undue influence which it requires very little evidence to substantiate. The attempt to conceal the real rate of interest, by describing it as one pice in the rupee per mensem or, as in the present case, Rs. 5 per mensem is evidence of an intention to get the better of the debtor. The law lays down that there must be a footing of complete equality between debtor and creditor and they must be, so to speak, at arm's length to make a bargain, which is in itself harsh and unconscionable, enforcible at law. *Carringtons, Ld.* v. *Smith,* [*1906*] *1 K. B. 79, In re a Debtor,* [*1903*] *1 K. B. 705,* referred to. Where there is ample security, an excessive rate of interest has been held to be anything over ten per cent. Where there is no security, no rate of interest can be considered excessive. There can be no standard rate on personal loans, and where the parties are reasonably

INTEREST—*contd.*

on terms of equality, a Judge cannot do better than adopt what they themselves have agreed on though, of course, when that is not the case he has to judge what is reasonable, as best he can and under all the circumstances. Where the contract is for a temporary accommodation, the stipulation that interest is to run at Rs. 5 a month is one which necessitates the payment of interest not at 60 per cent. per annum, but at Rs 5 in each month and a stipulation that in default of 12 months' instalments of interest, compound interest would begin to run, is in the nature of a penalty. However technical this may be, it is the duty of the Courts in India to enforce the letter of the law against obviously harsh and unconscionable bargains of this nature. The exploitation of the necessitous, of the careless and inexperienced, is a trade to be extirpated in the interest of the whole community as contrary to individual morality, as well as to public policy. *Muthu Krishna Iyer* v. *Sankaralingam Pillai, I. L. R. 36 Mad. 229, Samuel* v. *Newbold, [1906] A. C. 461, Kesavulu Naidu* v. *Arithulai Ammal, I. L. R. 36 Mad. 533,* referred to. ABDUL MAJEED *v.* KHIRODE CHANDRA PAL (1914). . . **I. L. R. 42 Calc. 690**

2. ——————— *Stipulation in mortgage bond for interest at 75 per cent. per annum, whether penalty—Liquidated damages—Undue Influence—Unconscionable bargain—Contract Act (IX of 1872), ss. 16, 74, illus. (f), as amended by Act VI of 1899, s. 4 (1)—Act XXVIII of 1855, s. 2. Per* MOOKERJEE *J.* (BEACHCROFT, J. agreeing to as to penalty). Notwithstanding the small group of cases where a restricted view was taken of the authority of the Court to relieve against a penalty, the tide has turned back, and the more modern cases repudiate the doctrine that any rate of interest, however exorbitant, cannot be deemed penal. *Motoji* v. *Sheikh Hasain, 6 Bom. H. C. 8, Pava* v. *Govind, 10 Bom. H. C. 382,* followed. *Arjan Bibi* v. *Asgar Ali, I. L. R. 13 Calc. 200, Gokul Chand* v. *Khaja Ali, (1890) Punj. Rec. 32, Sankaranarayana Vadhyar* v. *Sankaranarayana Ayyar, I. L. R. 25 Mad. 343, Chinna* v. *Pedda, I. L. R. 26 Mad. 445, Periaswami* v. *Subramanian, 14 Mad. L. J. 146,* not followed. This principle is fairly deducible from the modern decisions that the Court is competent to grant relief whenever the rate of interest appears to the Court to be penal. *Miajan Patari* v. *Abdul Jubbar, 10 C. W. N. 1020, Velchand* v. *Flagg, I. L. R. 36 Bom. 164: 14 Bom. L. R. 18, Ganapathi* v. *Sundara, 22 Mad. L. J. 354, Muthukrishna* v. *Sankaralingam, I. L. R. 36 Mad. 229,* followed. Although s. 74 of the Contract Act was originally framed to deal with the doctrine of penalty and liquidated damages as understood in the law of England, it is in its present form comprehensive enough to include the type of cases before the Court, because it covers all cases where the contract contains "*any stipulation by way of penalty.*" It is obvious that each case must be treated on its own circumstances. The test is, was the agreement to pay damages for the breach of contract unconscionable and extravagant, such as no Court ought to allow to be entered into. *Webster* v. *Bosanquet, [1912] A. C. 394,* referred to. "You are to consider whether it is extravagant, exorbitant, or unconscionable *at the time when* the stipulation is made—that is to say, in regard to any possible amount of damages which may be conceived to have been within the contemplation of the parties when they made the contract." *Clydebank Engineering Co.* v. *Don Jose Castaneda, [1905] A. C. 6,* referred to. A stipulation for merely accelerating payment of the whole debt in default of payment of one or more instalments is not, by itself, by way of penalty. *Ex-parte Burden, 16 Ch. D. 675, Sterne* v. *Beck, 1 DeG. J. & S. 595, Wallingford* v. *Mutual Society, 5 App. Cas. 685,* referred to. But when the entire sum which the creditor had agreed to receive in instalments without interest, is not only repayable in one sum, but is also made to carry interest at an unusual rate, the Court may, in view of all the circumstances of the case, regard the stipulation for payment of interest at an exorbitant rate as penalty. When (on an account originally made up very largely of interest at an exorbitant rate) the stipulation was made in the mortgage bond (no interest being payable up to due date) that upon default of payment of one or two instalments not only would the whole balance due become forthwith payable, but would carry interest at the rate of 75 per cent. per annum: *Held,* that the covenant for payment of interest at this rate was a *penalty, i.e.,* it did not represent the damages which the creditors were likely to suffer by reason of the default of the debtors, but was rather intended as an effective means to secure punctual performance of the contract. *Per* MOOKERJEE, *J.* Where the facts make it clear that the creditors were in a position to take advantage of the embarrassment of their debtors and the bargain they made was unconscionable, there is a concurrence of the two elements which must combine to attract the operation of s.16 of the Contract Act. *Davis* v. *Maung Shwe Goh, I. L. R. 38 Calc. 805; L. R. 38 I. A. 155, Kesavulu Naidu* v. *Arithulai Ammal, I. L. R. 36 Mad. 533,* followed. KHAGARAM DAS *v.* RAMSANKAR DAS PRAMANIK (1914). . . . **I. L. R. 42 Calc. 652**

INTEREST—*concld.*

INTEREST ACT (XXXII OF 1839).

——————— *Debt payable in kind—Interest allowable.* A debt which is specifically expressed as payable in certain fixed measures of grain and payable at a specified time is a debt *certain* within the meaning of Act XXXII of 1839 and interest is allowable on the same. *Juggomohun Ghose* v. *Manickchand, 7 Moo. I. A. 263,* referred to. *Narayan* v. *Nagappa, 12 Bom. L. R., 831,* dissented from. GOVINDAN NAIR *v.* CHERAL (1913) . . . **I. L. R. 38 Mad. 464**

INTERIM RECEIVER.

See INSOLVENCY . **I. L. R. 42 Calc. 289**

INTERLOCUTORY ORDER.

See JURISDICTION.
I. L. R. 42 Calc. 926

INTERNATIONAL LAW.

——— rules of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 86 . I. L. R. 38 Mad. 635

IRREGULARITY.

See CRIMINAL PROCEDURE CODE, SS. 145, 522 . I. L. R. 37 All. 654

See SALE FOR ARREARS OF REVENUE.
I. L. R. 42 Calc. 765

J

JAIGIR.

——— *Sanad, construction of —Tenure created by document—Custom—Life estate —Use of the words 'putra poutradi'—Absolute and heritable estate—Regulation XXXVII of 1793, s. 15.* A grant of a *jaigir* is a grant for life only, but in the absence of any custom to the contrary, the addition of the words "*putra poutradi*" in the grant implies an absolute and heritable estate and passes an estate of inheritance. Under a *sanad patta* the ancestor of the plaintiff granted a *jaigir* in the district of Hazaribagh to the grantee and his *putra poutradi*. On the death of the grantee and of his sons without any male issue, the plaintiff finding that the tenants of the *jaigir* stopped paying him the rents, brought a suit for resumption of the *jaigir* on the ground that according to custom the grant was a service grant and resumable by the grantor and his representatives on failure of male issue in the line of the grantee, and obtained a decree. On appeal to the High Court:—*Held*, that the original grantee took an absolute, heritable, and alienable estate and that all his heirs were capable of inheriting it. *Ramlal Mookerjee* v. *The Secretary of State for India, I. L. R. 7 Calc. 304*; *L. R. 8 I. A. 46*, followed. *Gulabdas Jugjivandas* v. *The Collector of Surat, I. L. R. 3 Bom. 186*; *L. R. 6 I A. 54*, *Bhujanga Rau* v. *Ramayamma, I. L. R. 7 Mad. 387*, and *Lalit Mohun Singh Roy* v. *Chukkun Lal Roy, I. L. R. 24 Calc. 834*; *L. R. 24 I. A. 76*, referred to. *Perkash Lal* v. *Rameshwar Nath Singh, I. L. R. 31 Calc. 561*, and *Roopnath Konwar* v *Juggunnath Sahee Deo, 6 S. D. A. Sel. Rep. 158*, distinguished. RAM SARAN LALL *v.* RAM NARAYAN SINGH (1914) . . I. L. R. 42 Calc. 305

JALKAR.

——— right of—

See FISHERY. I. L. R. 24 Calc. 489

JOINT BUSINESS.

See MAHOMEDAN LAW—JOINT BUSINESS.
I. L. R. 38 Mad. 109

JOINT EXECUTION.

See PROMISSORY NOTE.
I. L. R. 38 Mad. 680

JOINT FAMILY BUSINESS.

See HINDU LAW—JOINT FAMILY.
I. L. R. 39 Bom. 715

JOINT FAMILY PROPERTY.

——— if exists in Mahomedan Law—

See MAHOMEDAN LAW—JOINT BUSINESS.
I. L. R. 38 Mad. 1099

JOINT HINDU FAMILY.

See HINDU LAW—JOINT FAMILY.

See REGISTRATION.
I. L. R. 37 All. 105

——— *Ancestral property—Will—Probate—Payment of full probate duty.* In a case where there was admittedly a joint Hindu family consisting of a father and a minor son, the father made a will in effect bequeathing the whole property to his minor son. It was not disputed that the property covered by the will was joint family property. The executors contended that the deceased testator had no beneficial interest in any part of the property devised, and therefore they were exempted from the payment of any probate duty:—*Held*, that where the matter in question was probate, the parties claiming under the will could not go behind its terms, or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself, but with the express statements made therein and that the executors must pay full probate duty upon the will. *Collector of Kaira* v. *Chunilal, I. L. R. 29 Bom. 161*, distinguished. KASHINATH PARSHARAM *v.* GOURAVABAI (1914)
I. L. R. 39 Bom. 245

JOINT POSSESSION.

See HINDU LAW—HUSBAND AND WIFE.
I. L. R. 38 Mad. 1036

JOINT PROPERTY.

See HINDU LAW—HUSBAND AND WIFE.
I. L. R. 38 Mad. 1036

See PARTITION . I. L. R. 37 All. 155

JOINT TRADE.

See HINDU LAW—HUSBAND AND WIFE.
I. L. R. 38 Mad. 1036

JOINT TRIAL.

See EVIDENCE ACT (I OF 1872), S. 30.
I. L. R. 37 All. 247

See MISJOINDER OF CHARGES.
I. L. R. 42 Calc. 1153

JOINT VENTURE.

——— agreement for—

See PARTNERSHIP.
I. L. R. 39 Bom. 261

JUDGE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 27, CL. (*b*) **I. L. R. 38 Mad. 414**

JUDGMENT.

See RES JUDICATA. **I. L. R. 38 Mad. 158**

——— **setting aside a, for fraud—**

See FRAUD. **I. L. R. 38 Mad. 203**

——— *Not pronounced—Record lost—Procedure.* Where in a criminal case the accused was convicted and sentenced, the records in the case being at the time lost: *Held*, that it was unnecessary for the High Court to order a retrial especially in the absence of an appeal by the accused person. There is no provision of law which enacts that unless all the records of a case are in the court-house at the time of conviction and sentence the conviction and sentence are void and should be quashed or that the Sessions Judge's trial has been held or the sentence passed without jurisdiction. Where a judgment has been lost the appropriate course is for the Sessions Judge to rewrite it from memory, and from the materials before him and place it on record. *Re* KAMAKSHAMMA (1913) **I. L. R. 38 Mad. 498**

JUDGMENT CREDITOR.

See INSOLVENCY . **I. L. R. 42 Calc. 72**

JUDGMENT-DEBTOR.

See ASSIGNEE OF A MONEY-DECREE. **I. L. R. 38 Mad. 36**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 34 . **I. L. R. 37 All. 452**

——— **death of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50. **I. L. R. 38 Mad. 1076**

JUDICIAL ENQUIRY.

See SURETY . **I. L. R. 42 Calc. 706**

JUDICIAL NOTICE.

See MAPPILLAS OF NORTH MALABAR. **I. L. R. 38 Mad. 1052**

JURISDICTION.

See JURISDICTION OF CIVIL COURT.

See JURISDICTION OF CIVIL AND REVENUE COURTS.

See JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF HIGH COURT.

See JURISDICTION OF MAGISTRATE.

See AGRA TENANCY ACT (II OF 1901), S. 199 . . **I. L. R. 37 All. 95**

See BENGAL, N. W. P. AND ASSAM CIVIL COURTS ACT (XII OF 1887), S. 22 (*3*). **I. L. R. 37 All. 232**

JURISDICTION.—*contd.*

See BOMBAY CIVIL COURTS ACT (XIV OF 1869), S. 16 . **I. L. R. 39 Bom. 136**

See CIVIL COURTS ACT (XII OF 1887), SS. 21 AND 22 . **I. L. R. 37 All. 76**

See CIVIL PROCEDURE CODE (1908), S. 9. **I. L. R. 37 All. 313**

See CIVIL PROCEDURE CODE (1908), S. 20 (*c*). **I. L. R. 37 All. 189**

See CIVIL PROCEDURE CODE (1908), S. 152. . . **I. L. R. 37 All. 323**

See CIVIL PROCEDURE CODE (1908), O. IX, R. 13 . **I. L. R. 37 All. 208**

See CRIMINAL PROCEDURE CODE, (ACT V OF 1898) SS. 110 AND 526. **I. L. R. 37 All. 20**

See CRIMINAL PROCEDURE CODE, 1898, SS. 145 AND 522 . **I. L. R. 37 All. 654**

See CRIMINAL PROCEDURE CODE, 1898, SS. 179 TO 188 **I. L. R. 38 Mad. 779**

See CRIMINAL PROCEDURE CODE, 1898, S. 339 . . **I. L. R. 37 All. 331**

See CRIMINAL PROCEDURE CODE, 1898, SS. 345 AND 439 **I. L. R. 37 All. 419**

See CRIMINAL PROCEDURE CODE, 1898, S. 476 . . **I. L. R. 37 All. 344**

See DECREE . **I. L. R. 39 Bom. 34**

See EVIDENCE . **I. L. R. 38 Mad. 160**

See FORFEITURE. **I. L. R. 42 Calc. 730**

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 12, 24, 25. **I. L. R. 37 All. 515**

See HIGH COURTS ACT (24 & 25 VICT. C. 104), SS. 2, 9 AND 13. **I. L. R. 39 Bom. 604**

See HOMESTEAD LAND. **I. L. R. 42 Calc. 638**

See MADRAS CITY MUNICIPAL ACT (MAD. III OF 1904) . **I. L. R. 38 Mad. 581**

See PENAL CODE (ACT XLV OF 1860), S. 405. **I. L. R. 38 Mad. 639**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S. 35. **I. L. R. 37 All. 450**

See REGULATION (V OF 1886), SS. 85, 141. **I. L. R. 37 All. 220**

See SANCTION FOR PROSECUTION. **I. L. R. 42 Calc. 667**

See TRADE MARK . **I. L. R. 37 All. 446**

——— **of Municipal Courts—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 86 . **I. L. R. 38 Mad. 635**

1. ——— *Proceeding under s. 10, Civil Procedure Code—High Court's Jurisdiction to interfere with interlocutory orders—Civil Procedure Code (Act V of 1908), s. 10—Charter*

JURISDICTION—*contd.*

Act (24 & 25 Vict. c. 104), s. 15. The jurisdiction of a Court in a proceeding under s. 10 of the Code of Civil Procedure is limited to stopping a new suit if the circumstances mentioned in that section as conditions precedent to the passing of the order be found by the Court to exist. Courts have no jurisdiction to decide the question of *res judicata* in such a proceeding. Where a Court has jurisdiction to pass an order, but it has been exercised in violation of the provisions of the law and under a misapprehension of the questions at issue, the Court must be held to have acted with material irregularity in the exercise of its jurisdiction. *Venkubai* v. *Lakshman Venkoba Khot, I. L. R. 12 Bom. 617, Sew Bux Bogla* v. *Shib Chunder Sen, I. L. R. 13 Calc. 225, Jugobundhu Puttuck* v. *Jodu Ghose, I. L. R. 15 Calc. 47, Tarini Charan Banerjee* v. *Chandra Kumar Dey, 14 C. W. N. 788,* referred to. The High Court is entitled to interfere under s. 15 of the Charter Act, if not under s. 115 of the Code, with interlocutory orders, when they might lead to failure of justice or irreparable injury. *Dhapi* v. *Ram Pershad, I. L. R. 14 Calc. 768, Gobinda Mohan Das* v. *Kunja Behary Dass, 14 C. W. N. 147,* and *Amjad Ali* v. *Ali Hussain Johar, 15 C. W. N. 353,* referred to. SIVAPRASAD RAM *v.* TRICOMDAS COVERJI BHOJA (1915) . . . . **I. L. R. 42 Calc. 926**

2. ——— *"Suit for land or other immoveable property", construction of—Letters Patent, 1865, cl. 12—Trespass—Compensation for wrong to land—Wrongful cutting and removal of coal—Civil Procedure Code (Act V of 1908), s. 16—Civil Procedure Code (Act VIII of 1859), s. 5—Venue.* The expression "suits for land or other immoveable property" in cl. 12 of the Charter of 1865 cannot be construed as being limited to suits for the recovery of land in its strict sense, but must be construed as extending to a suit for compensation for wrong to land, where the substantial question is the right to the land. SUDAMDIH COAL CO., LD. *v.* EMPIRE COAL CO., LD. (1915). **I. L. R. 42 Calc. 942**

3. ——— *Suit to enforce mortgage of land partly in Sonthal Parganas and partly in local jurisdiction of Bhagalpur Court—Jurisdiction of Bhagalpur Court—Sonthal Parganas Settlement Regulation (III of 1872), ss. 5 and 6—Sonthal Parganas Act (XXXVII of 1855), s. 2—Sonthal Parganas Justice Regulation (V of 1893), Part 2 and s. 10—Consent of parties to jurisdiction of a Court—Usury provision relating to, in s. 6, Regulation III of 1872—Question of Jurisdiction not taken in High Court—Scheduled Districts Act (XIV of 1874).* In a suit in the Court of the Subordinate Judge of Bhagalpur, to enforce a mortgage bond for principal and interest amounting to over 5 lakhs of rupees, by far the greater portion of the mortgaged property was situtated in the Sonthal Parganas, and the mortgagors resided in that district the rest of the property being situated within the local jurisdiction of the Bhagalpur Court. The mortgage bond was executed at Bhagalpur, and contained a stipulation that the mortgagees might enforce it in the Bhagalpur Court. The suit was instituted on 20th June 1904. On an objection taken that the Bhagalpur Court had no jurisdiction to entertain the suit:—*Held,* on an examination and consideration of the Acts and Regulations applicable to the Sonthal Parganas, that at the date the suit was commenced no suit would lie in any Court established under the Bengal Civil Courts Act (VI of 1871) or under the Bengal United Provinces, and Assam Civil Courts Act (XII of 1887) which has taken its place, in regard to any land, or any interest in, or arising out of land, but such suits must have been brought before Settlement Officers, or in Courts of Officers appointed under s. 2 of the Sonthal Parganas Act (XXXVII of 1855), and the Sonthal Parganas Justice Regulation (V of 1893), Part 2, so long as the land had not been settled, and the settlement declared by a notification in the Calcutta Gazette to have been completed and concluded. And, it being found that the land included in the mortgage in suit had not been wholly settled, the suit came within the provisions of s. 5 of the Sonthal Parganas Settlement Regulation (III of 1872), and was excluded from the jurisdiction of any but the special officers or Courts appointed under s. 2 of Act XXXVII of 1855, and therefore the Bhagalpur Court not being one of the special Courts had no jurisdiction to try it. The stipulation in the mortgage bond to the effect that the mortgagees might enforce it in the Bhagalpur Court was of no effect. As the suit was one with regard to land in the Sonthal Parganas which the Bhagalpur Court had no jurisdiction to entertain, the parties could not by consent give the necessary jurisdiction to the Court. To allow them to do so would be to nullify the express provisions of s. 5 of Regulation III of 1872, which was binding on any Court having jurisdiction in the Sonthal Parganas in the exercise of such jurisdiction. *Held,* also, that apart from the question of jurisdiction, any Court dealing with the subject matter of the suit would be bound to give full force and effect to the provisions of s. 6 of Regulation III of 1872, relating to usury, and therefore to refuse to decree any compound interest arising from any intermediate adjustment of interest, or a total amunt of interest exceeding the principal of the original debt or loan. This provision of s. 6 was not one of procedure, but of substance, and so far as the Courts having jurisdiction within the Sonthal Parganas are concerned, it places all contractual stipulations as to compound interest in a position of non-enforceability, and limits statutably the total interest which can be decreed on a loan or debt. The question of jurisdiction which depended on no disputed facts, was in issue in the suit, and had been adjudicated upon in the first Court, was one which their Lordships were of opinion they could not decline to entertain though not specifically raised on the appeal, especially as it necessarily presented itself in argument. *Semble:* The provisions of the Scheduled Districts Act (XIV of 1874) have never

JURISDICTION—*concld.*

been extended to the Sonthal Parganas. MAHA PRASAD SINGH *v.* RAMANI MOHAN SINGH (1914) **I. L. R. 42 Calc. 116**

4. ——— *The Suits Valuation Act (VII of 1887), s. 8—Suit to eject a tenant holding over—Court Fees Act (VII of 1870), s. 7, cl. (xi) (cc)—Madras Civil Courts Act (III of 1873), s. 14.* The effect of amendment of s. 7 of the Court Fees Act (VII of 1870) by adding to it cl. (*xi*), (*cc*) is that a suit to recover immoveable property from a tenant is governed for purposes of jurisdiction by s. 8 of the Suits Valuation Act (VII of 1887), and not by s. 14 of the Madras Civil Courts Act (III of 1873); so that in the case of such suits the valuation for purposes jurisdiction is the same as for court-fees. *Chalasawmy Ramiah* v. *Chalasawmy Ramaswami, 11 Mad. L. J. 155,* distinguished. SESHAGIRI ROW *v.* NARAYANASWAMI NAIDU (1914) **I. L. R. 38 Mad. 795**

5. ——— *To entertain suit after remand—Suit originally tried by District Judge, after remand tried with consent of parties by Subordinate Judge—Irregular assumption of jurisdiction no objection.* Where a suit valued at Rs. 1,368 was heard in the first instance before the District Judge and dismissed as barred by limitation, but on appeal the High Court remanded it for trial on the other issues, and thereafter the case having been transferred to the file of the Subordinate Judge, the latter officer with the consent of the parties tried and disposed of the suit: *Held,* that if the order of the High Court did not place any restrictions on the power of the District Judge to transfer the case, the transfer was authorised by s. 24 of the Civil Procedure Code. But if the remand order was interpreted to have directed the District Judge himself to try the suit, it was not a case of the trying Court not having local or pecuniary jurisdiction but of that Court assuming jurisdiction in an irregular manner, and the parties having consented to the trial by the Subordinate Judge were not entitled to object to it on that ground on appeal; and it was immaterial that as a consequence of such trial appeal from his decision on facts lay before the District Judge and not before the High Court. PROTAP CHANDRA ROY *v.* JUDHISTIR DAS (1914) **19 C. W. N. 143**

JURISDICTION OF CIVIL COURT.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8 . **I. L. R. 38 Mad. 608**
See PENSIONS ACT (XXIII OF 1871), SS. 4, 5, 6 . . **I. L. R. 37 All. 338**

JURISDICTION OF CIVIL AND REVENUE COURTS.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8. **I. L. R. 38 Mad. 608, 843**

JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF MAGISTRATES.

JURISDICTION OF MAGISTRATES.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 144. **I. L. R. 38 Mad. 489**

JURISDICTION OF REVENUE COURT.

See MADRAS ESTATES LAND ACT (I OF 1908) . . **I. L. R. 38 Mad. 33**

JURY.

See CRIMINAL PROCEDURE CODE, 1898, S. 133 . . **I. L. R. 37 All. 26**
See PARDON . **I. L. R. 42 Calc. 856**

JURY TRIALS.

See REFERENCE . **I. L. R. 42 Calc. 789**

JUSTIFICATION.

See PENAL CODE (ACT XLV OF 1860), SS. 40, 79 . **I. L. R. 38 Mad. 773**

K

KALIGHAT TEMPLE.

See PALAS OR TURNS OF WORSHIP. **I. L. R. 42 Calc. 455**

KASBATIS.

——— *History and status of Kasbatis in Gujarat—Ahmedabad Taluqdar's Act (Bombay Act VI of 1862)—Gujarat Taluqdars Act (Bombay Act VI of 1888)—Bombay Land Revenue Code (Bombay Act V of 1879), ss. 68, 73—Rights of Kasbatis after cession to and annexation by British Government—Rights of lessees from Bombay Government—Onus of proof on claimant of rights of permanent tenure—Lease implies no obligation to renew at end of term—Obligation to give up possession at end of lease.* In this case their Lordships of the Judicial Committee held (reversing the judgments of the Courts below) that the respondent, the descendant of a family of Kasbatis who were in possession of a village called Charodi in the district of Ahmedabad in Gujerat at the date of the cession of that district by the Peishwa to the British Government, and whose predecessors-in-title held thereafter under leases from the Government, were mere lessees of the Government of Bombay, bound to give up, at the end of each term of lease, possession of the village, and were never legally entitled as each lease terminated to have a new lease granted to the last lessee or representative, and therefore never acquired permanent possession of the village. The only legal enforceable right the Kasbatis could have as against the British Government were those and those only, which that Government by agreement express or emplied, or by legislation chose to confer upon them. The relation in which they stood to their native sovereign, and the consideration of the existence, nature and extent of their rights before

KASBATIS—*concld.*

the cession were only relevant matters for the purpose of determining whether and to what extent the British Sovereign had recognized their ante-cession rights, and had elected or agreed to be bound by them. The burden of proving that they had any such rights which the Bombay Government consented to their continuing to enjoy rested upon the respondent. The principle laid down in *The Secretary of State for India in Council* v. *Kamachee Boye Sahaba, 7 Moo. I. A. 476,* and *Cook V. Sprigg [1899] A. C. 572,* followed. The just and reasonable inferences to be drawn from the evidence were that the respondent had failed to discharge the onus on her; that the Bombay Government had never by agreement express or implied conferred upon her or any of her ancestors the proprietary rights in, or ownership of, the village claimed by her; they never conferred upon any of the lessees of the village a legal right to insist, at the termination of the lease, upon a new lease being granted; they were never under a legal obligation to grant any lease of the village, and the granting or withholding of a lease rested solely in their discretion. The mere repetition of acts of grace by the Government could not *per se* create a legal right to their continuance. *Primâ facie* a lease for a term does not import any right to a renewal of : on the contrary it *primâ facie* implies that the lessees' right to the premises ends with the term. There was no analogy between holdings of the Grassias and the Kasbatis; they and the Mewassies were clearly distinguishable from the Kasbatis. The Ahmedabad Taluqdars Act (Bombay Act VI of 1862) did not apply to Kasbati lessees. They never were Ahmedabad Taluqdars in the true sense: they did not lose their ancient rights of ownership of land by taking leases as did the Grassias and therefore did not suffer the injustice which the statute was designed to remedy. The effect of ss 68 and 73 of the Bombay Land Revenue Code (Bombay Act V of 1879) read with the Gujerat Taluqdars Act (Bombay Act VI of 1888) is that a lessee whether a true Taluqdar, or a Thakur, Mewassie, Kasbati, or Naik, is bound by the terms of his lease, one term of which is that he shall only occupy for the term of years for which a lease for years is granted, and *primâ facie* no longer. SECRETARY OF STATE FOR INDIA *v.* BAI RAJBAI (1915)
I. L. R. 39 Bom. 625

KHORPOSH GRANT.

——— *Sub-soil right.* The interest of a *khorposhdar* heritable in the male line was a limited interest liable to be defeated at any time by the failure of heirs and thereupon resumable by the proprietor for the time being, and would not be an interest sufficient to carry with it the sub-soil rights. BISWANATH GORAIN *v.* SURENDRA MOHAN GHOSE (1913)
19 C. W. N. 102

KIDNAPPING.

See PENAL CODE (ACT XLV OF 1860), SS. 366 AND 372.
I. L. R. 37 All. 624

KING'S PREROGATIVE OF PARDON.

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 42 Calc. 739

KNOWLEDGE.

See PROBATE . **I. L. R. 42 Calc. 480**

KNOWLEDGE AND INTENT.

See PENAL CODE (ACT XLV OF 1860), S. 86 . . **I. L. R. 38 Mad. 479**

——— **of contents—**

See ATTESTATION OF INSTRUMENT.
I. L. R. 37 All. 350

KUDIVARAM.

——— **acquisition of—**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8, EXCEP.
I. L. R. 38 Mad. 843

——— **right to—**

See MADRAS ESTATES LAND ACT (I OF 1908), S 8 (EXCEP)
I. L. R. 38 Mad. 608, 843

——— **sale of—**

See LIMITATION ACT (IX OF 1908), S. 22.
I. L. R. 38 Mad. 837

L

LACHES.

See HUNDI SHAH JOG.
I. L. R. 39 Bom. 513

LAMBARDAR AND CO-SHARER.

See AGRA TENANCY ACT (II OF 1901), S. 164 . . **I. L. R. 37 All. 595**

LAND ACQUISITION ACT (I OF 1894).

——— **ss. 9, 18, 25**—*Effect of omission of owner to state his claim under s. 9—Reference under s. 18—Limitation of powers of Judge.* The facts that there had been previous negotiations between the Government and a person whose land the Government wished to acquire and that the Government was aware of the price which the owner had asked for the land would not afford a sufficient reason for the owner omitting to put in any claim under s. 9 of the Land Acquisition Act, 1894, nor relieve the owner from the consequence of such omission as set forth in s. 25. NARAIN DAT *v.* THE SUPERINTENDENT OF DEHRA DUN (1914)
I. L. R. 37 All. 69

——— **ss. 18, 30—**

See MORTGAGE . **I. L. R. 42 Calc. 1146**

——— **ss. 31, 32**—*Debutter lands—Status of shebaits —Order for deposit of compensation money, there being no person competent to alienate the lands.* Where certain lands dedicated to an idol were acquired under the Land Acquisition Act and the application of the *shebaits* for payment of the

LAND ACQUISITION ACT (I OF 1894)—*concld.*

——— **s. 31**—*concld.*

compensation money was rejected and an order for deposit thereof in Court was made: *Held*, that a *shebait* has no power to alienate the dedicated property in the general character of his rights and the order made was a proper order. RAM PRASANNA NANDY *v.* SECRETARY OF STATE FOR INDIA (1913) . . . **19 C. W. N. 652**

——— **ss. 35, 36** (*2*)—*Compensation—Principle on which it should be awarded.* Where culturable land in the hands of tenants was acquired temporarily for the purpose of digging kankar: *Held*, that, having regard to s. 36 of the Land Acquisition Act 1894, such portion of the compensation as might be awarded to the owner for the purpose of restoring the land to its original condition was not assessable until after the term of occupation had expired. In the circumstances of the case also this amount was not rightly assessed on the probable value of the kankar which might hypothetically be extracted from the land. SECRETARY OF STATE FOR INDIA *v.* ABDUL SALAM KHAN (1915) . . . . **I. L. R. 37 All. 347**

——— **s. 54**—*Order allowing withdrawal of money deposited under s. 31, if appealable.* Under s. 54 of the Land Acquisition Act there is no appeal against an order of the District Judge allowing a Hindu widow to withdraw the compensation money deposited by the Collector under s. 31 of the Land Acquisition Act. BISWA NATH SINGHA *v.* BIDHUMUKHI DASI (1915) **19 C. W. N. 1290**

LAND-ACQUISITION JUDGE.

See MORTGAGE **I. L. R. 42 Calc. 1146**

LAND-HOLDER.

See MADRAS ESTATES LAND ACT (I OF 1908) . . **I. L. R. 38 Mad. 33**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 3 **I. L. R. 38 Mad. 1155**

LANDLORD AND TENANT.

	Col.
1. ALIENATION	253
2. EJECTMENT	254
3. ENCROACHMENT	254
4. ESTOPPEL	255
5. IMPROVEMENTS	255
6. INAM LANDS	256
7. RENT	257
8. TITLE	258

See BENAMI TRANSACTION. **I. L. R. 37 Calc. 557**

See FAZENDARI TENURE. **I. L. R. 39 Bom. 316**

1. ALIENATION.

——— *Position of landlord purchasing raiyat's interest.* The position of the landlord purchasing the raiyat's interest under a private alienation and of the landlord purchasing himself at a sale for arrears of rent, distinguished. JANAKINATH HORE *v.* PRABHASINI DASI (1915). **19 C. W. N. 1077**

2. EJECTMENT.

1. ——— *Suit by former in ejectment—Burden on latter to prove land held in tenancy.* What was held in *Rajendra Kumar Bose* v. *Mohim Chandra Ghose, 3 C. W. N. 763*, was that when a tenant has been in possession of land ostensibly as part of an admitted tenure, it lies upon the landlord in a suit in ejectment to prove in the first instance that the land is his khas property. It is not the law that because a defendant is found to be a tenant of some land under the plaintiff, the burden is thereby cast upon the plaintiff to establish that the land he seeks to recover is outside the tenancy of the defendant. The burden would ordinarily be on the defendant to prove the tenancy under which he claims to hold it. *Nanda Lal Goswami* v. *Jajneswar Haldar, 6 C. W. N. 105*, and *Sheodeni Roy* v. *Chatterbhuj Roy, 12 C. L. J. 376*, referred to. PROTAP CHANDRA ROY *v.* JUDHISTIR DAS (1914). **19 C. W. N. 143**

2. ——— *Suit by former to eject latter from land alleged to be khas—Onus, if on landlord or on tenant to prove tenancy.* The mere fact that the defendant holds some land under the plaintiff as tenant would not be sufficient to throw upon the plaintiff the burden of showing that in respect of any other land in the zamindari which the defendant may be found to be in possession of, he has no right as tenant. The burden of proof in a case like this is on the tenant. The principle laid down in *Rhidoy Krista Mistri's Case, 12 C. L. R. 457*, throwing the onus on the plaintiff should be held applicable to cases where the land sought to be recovered is admitted by the plaintiff to be contiguous to the holding of the defendant, or that it has come to his possessions by encroachment. GOPINI DEBI *v* RAM TARAN TEWARY (1911) . . . **19 C. W. N. 140**

3. ENCROACHMENT.

——— *Encroachment by tenant upon land not his landlord's—Tenant if may keep land in a suit by owner to recover—"Bonâ-fide possession under a de facto landlord," what amounts to—Possession by de facto landlord and settlement of encroached land with tenant to be proved.* The principle of the Full Bench decision in *Binad Lal Pakrashi* v. *Kalu Pramanik, I. L. R. 20 Calc. 708*, only applies where raiyats are settled upon land by a person in *de facto* possession as landlord, who is afterwards found to have no title. It is not applicable in every boundary dispute or in every case where a question of parcel and no parcel arises. Where in a suit by the owner, B, to recover land from C, who held other lands

LANDLORD AND TENANT—*contd.*

1. ALIENATION—*concld.*

LANDLORD AND TENANT—*contd.*

3. ENCROACHMENT—*concld.*

as A's tenant, it was not found that the disputed land was ever in A's possession or that it was included in the area settled by A with C, but C appeared to have encroached upon the land in such circumstances as to raise a presumption that the encroachment would enure to A's benefit and become an accretion to C's holding under A: *Held*, that though A might perhaps be described as C's *de facto* landlord, it could not be said that the land was settled with C by A, and there is nothing in the Full Bench decision to prevent B from suing to recover possession from A and C. TEPU MAHAMMAD *v.* TEFAYET MAHAMMAD (1915) **19 C. W. N. 772**

4. ESTOPPEL.

——————— *Estoppel—Tenant admitted into possession, if may deny landlord's title and set up a different title derived from stranger.* A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord. BILAS KUNWAR *v.* DESRAJ RANJIT SINGH (1915) **I. L. R. 37 All. 557**
19 C. W. N. 1207

5. IMPROVEMENTS.

——————— *Tenancy, determination of—Improvements, non-removal of during tenancy—Right to them or their value after determination of tenancy —Transfer of Property Act (IV of 1882), s. 108 (h).* The plaintiff's husband took a house site on lease from the predecessor in title of the first defendant in 1883. After 1883 and before 1st May 1898 the plaintiff built a house thereon to the knowledge of the landlord and the lease was renewed by the first defendant on 1st May 1898 in plaintiff's favour who thereby agreed to vacate the land on a month's notice. While the plaintiff was in possession under that lease, the first defendant filed a suit in ejectment in the Small Cause Court, Madras, and though the present plaintiff then set up the claim now advanced, *viz.*, a right to the superstructure built by her or its value, she was ordered without the determination of the right set up by her, to deliver possession of the land on or before the 26th February 1907, and on her failure to do so the first defendant was put in possession on that date. On the 1st August following, the first defendant gave the plaintiff notice to remove the superstructure within a fortnight. She did not do so but in 1908 instituted the present suit for (*a*) a declaration that she was the owner of the house built by her and for its possession or (*b*) in the alternative to be paid compensation for it or (*c*) if that was not granted, to be allowed to remove the superstructure. WALLIS *J.*, holding that the plaintiff was not entitled to any of the reliefs dismissed the suit. *Held* on appeal, confirming the judgment of WALLIS, *J.* (SANKARAN NAIR, *J.*, dissenting), that the plaintiff

LANDLORD AND TENANT—*contd.*

5. IMPROVEMENTS—*concld.*

was not entitled to any of the reliefs asked for. *Held* by the Court, that the landlord was not estopped from disputing the plaintiff's right, if any, by the mere fact that the house was erected with his knowledge and without any protest by him. *Held* (WHITE, *C. J.*, dissenting), that the tenant was, for the purpose of removing her superstructure, entitled to a reasonable time after the determination of the tenancy whether it is by act of parties or by the order of Court. *Held* by MILLER, *J.*, that the tenant having been given ample time to remove the building after giving up possession through Court she was not entitled to any further time. *Per* WHITE, *C. J.*—S. 108, clause (*h*) of the Transfer of Property Act, governed the case and the tenant was not entitled to remove the buildings after the termination of the tenancy. *Per* SANKARAN NAIR, *J.*—S. 108 of the Transfer of Property Act is only an enabling section and it did not take away the pre-existing right of the tenant to compensation or to remove building even after the termination of the tenancy if he is not given compensation. The new lease having recognised the tenant's ownership in the house, the plaintiff's ownership thereto cannot be defeated by her failure to remove the house within a reasonable time and as such failure cannot effect a transfer of ownership, all that the landlord was entitled to was an option to retain the building and pay compensation for it or to restore the land to its old condition by removing the building and claim damages. *Per* MILLER, *J.* The recognition by the landlord for the period of the new tenancy, of the tenant's property in the building has no other necessary effect than to prevent the landlord from treating the building as having been surrendered to him at the end of the previous term and it was only a piece of evidence of a contract to allow the removeable fixture to remain *as such* upon the land for the new term. *Ismai Kani Rowthan* v. *Nazarali Sahib, I L. R. 27 Mad. 211*, referred to. English and Indian Case Law on the subject, considered. ANGAMMAL *v.* ASLAMI SAHIB (1913) . **I. L. R. 38 Mad. 710**

6. INAM LANDS.

——————— *Inam Register—Object of mentioning the tax payable for the land—Inam authorities, duties of—Right of melvaramdar to trees in case of lands which were topes at the Inam Settlement.* In cases where the holding of a tenant was at the time of the Inam Settlement and has subsequently been a tope consisting of trees the melvaramdar has a right to a portion of the value of the trees and the ryot is not entitled to cut them down for his sole appropriation, the portion due to melvaramdar being determinable according to the evidence. The incidents of the tenure of a tenant under an inamdar are governed by the law applicable to landlord and tenant and not by the Inam patta or the Inam Register whose object in mentioning the tax payable by the tenant was only to enable the Inam authorities to

LANDLORD AND TENANT—*contd.*

6. INAM LANDS—*concld.*

fix the quit-rent payable to Government by the Inamdar. *Bodda Goddeppa* v. *The Maharaja of Vizianagram, I. L. R. 30 Mad. 155, Rangayya Appa Rao* v. *Kadiyala Ratnam, I. L. R. 13 Mad. 249, Apparau* v. *Narasanna, I. L. R. 15 Mad. 47, Narayana Ayyangar* v. *Orr, I. L. R. 26 Mad. 252,* and *Kakarla Abbayya* v. *Raja Venkata Pappayya Rao, I. L. R. 29 Mad. 24,* distinguished. SRI RAJAGOPALASWAMI TEMPLE *v.* JAGANNADHA PANDIAJIAR (1913) . . **I. L. R. 38 Mad. 155**

7. RENT.

1. ——— *Adjustment of account between landlord and tenant—Wasil-baki—Portion of amount due on adjustment, kept in deposit with tenant for payment to superior landlord—Such amount if continues to be rent and if recoverable as such—Limitation Act (IX of 1908), Sch. I, Art. 115.* The plaintiff was the landlord and the defendant the tenant. There was an adjustment of accounts between them as regards rent in 1312 F. S., the adjustment being embodied in a *wasil-baki,* and the defendant was found liable to pay a certain amount out of which Rs. 136-2 was left with the defendant as a deposit for payment to the superior landlord on account of rent payable by the plaintiff to the latter and the balance was stated as payable to the plaintiff. The defendant did not make the payment to the superior landlord who sued the plaintiff and obtained a decree against him for the amount due from him. The plaintiff thereupon sued the defendant to recover the rent for the years 1313 to 1315 and the amount which he had to pay to the superior landlord with interest: *Held,* that the *wasil-baki* showing that the amount which was to be paid to the superior landlord was left in deposit with the defendant, it must be held that there was a discharge for this portion of the rent. The assignee was no party to the contract but if, as the contract showed, the amount was left in deposit with the defendant for payment to a third party and it amounted to a discharge so far as that portion of the rent was concerned, the amount so kept in deposit ceased to be rent and recoverable as such and Art. 115 of the Limitation Act was applicable to the case. LUCHMI MISSIR *v.* DEOKI KUAR (1913).
19 C. W. N. 174

2. ——— *Eviction, constructive—Tenant never put in possession of entirety of demised land—Acquiescence—Payment of full rent—Suit for rent—Plea of suspension of rent, if sustainable—Abatement—Apportionment.* Where a tenant who had not been put in actual possession of a portion of the demised land, nevertheless went on paying the full rent agreed to in the lease; in a suit for recovery of arrears of rent by the landlord: *Held,* that the tenant cannot in such circumstances claim suspension of rent, but the rent payable to the landlord was liable to abatement. *Annada Prosad* v. *Mathuranath, 13 C. W. N. 702,* followed. SARADA PROSAD BHATTACHARJEE *v.* RAI MONMATHA NATH MITTER (1914).
19 C. W. N. 870

LANDLORD AND TENANT—*concld.*

7. RENT—*concld.*

8. TITLE.

——— *Dispute between, as to possession of specific plot —Onus of proof—Zerait, necessity of proving disputed land—Khas land other than zerait—Tenure or holding —Lease to ticcadar to cultivate—Lands cultivated if raiyati land of ticcadar—Ticcadar's possession of land outside ticca, if adverse to landlord.* The owner of a tauzi is entitled to recover possession of lands within it, unless the defendants whom he sues can prove a subordinate interest that derogates from his title. The fact that he has failed to prove certain specific titles which he in addition asserted in the disputed lands, does not deprive him of this initial presumption in his favour. The onus which is on the defendants must be discharged by them. The fact that the defendants were raiyats holding other lands of the village would make them settled raiyats of the disputed lands if they proved that these lands were held by them as raiyats, but not, if they fail to prove this. *Rajendra Kuar* v. *Mohim Chandra, 3 C. W. N. 763,* did not apply to this case, in which the defendants held a number of separate holdings and did not claim to hold the land in suit as part of any specific holding. Where a ticcadar took a lease of lands far exceeding 100 bighas in area to "cultivate by sowing indigo or other crops either by means of *khas* cultivation or through tenants:" *Held,* that it was a tenure. A tenure-holder does not become a raiyat with respect to all land that comes into his direct possession, because the lease authorises him to cultivate these lands. A proprietor may hold other lands besides *zerait* lands in *khas* possession, and because he recovers possession of lands on the basis of the presumption arising from his proprietorship, it does not follow that the land is *zerait,* nor does the fact that he fails to prove the land to be *zerait* prevent him from claiming the land, if the defendant fails to establish a subordinate interest in it. Where the proprietors having purchased certain holdings suffer them without any arrangement to be taken possession of by their ticcadars, the ticcadars' possession of such holdings does not become adverse to the proprietors. MANNERS *v.* HARIHAR KOER (1914).
19 C. W. N. 149

LAND REGISTRATION ACT (BENG. VII OF 1876).

——— **s. 78**—*Suit for rent—Dismissal for non-registration of plaintiffs' names under the Act—Registration pending appeal, effect of—Costs.* Where a suit failed by reason of non-registration of the plaintiffs' names under Act VII of 1876, s. 78, but registration was obtained during the pendency of the plaintiffs' appeal, the High Court, on second appeal, directed the case to be disposed

LAND REGISTRATION ACT (BENG. VII OF 1876)—*concld.*

——— s. 78—*concld.*

of by the Trial Court on the merits, it appearing that no portion of the claim was barred on the day when the land registration was really taken. The plaintiffs were directed to pay the costs of the defendants of the original trial, and were not allowed costs of either Court of Appeal. CHULLAN SINGH *v.* MADHO SINGH (1915) **19 C. W. N. 794**

LAND REVENUE CODE, BOMBAY (BOM. V OF 1879).

——— s. 10—

See MAMLATDARS' COURTS ACT, BOMBAY (BOM. II OF 1906), S. 23.
I. L. R. 39 Bom. 552

——— ss. 65, 66—*Possession of land as owner for fifty years—User of land as graveyard and also as timber depôt—Order by Government for discontinuing the user as timber depôt—Order ultra vires—Land Revenue Code (Bom. Act V of 1879). ss. 65, 66.* The plaintiffs were in possession of the land in dispute as owners ever since 1860 and used a portion of it as a graveyard, and on another portion of it they built a shed which was used as a timber shop. In 1871, Government assessed the land and entered it in the Revenue Registers as "Government waste land." The plaintiffs paid no assessment on the land. In 1908, the District Deputy Collector passed an order directing the Mamlatdar to "cause the building and the wood to be removed forthwith from the said land." This order was finally confirmed by the Commissioner on the 24th April 1909. The plaintiffs filed the present suits on the 2nd February 1910, to obtain a declaration that they were absolute owners of the land, to have set aside the order of 1909, and to get a permanent injunction restraining Government from disturbing the plaintiffs in their possession of the land. The lower Court dismissed the suits holding that the plaintiffs were not absolute owners but occupants only, and that the suits were barred under Article 14 of the first schedule to the Limitation Act, 1908. The plaintiffs having appealed: *Held*, that as the land in dispute was not used for the purpose of agriculture, neither s. 65 nor s. 66 of the Land Revenue Code (Bom. Act V of 1879) applied to the case, and the orders passed by the Revenue Authorities to evict the plaintiffs were *ultra vires*. RASULKHAN HAMADKHAN *v.* SECRETARY OF STATE FOR INDIA (1915).
I. L. R. 39 Bom. 494

——— Chap. XII—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 191 (1) (*c*).
I. L. R. 39 Bom. 310

LEADING QUESTIONS.

See CHARGE. . **I. L. R. 42 Calc. 957**

LEASE.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 42, CL. (*a*) AND (*b*) AND 2.
I. L. R. 38 Mad. 524

See STAMP ACT (II OF 1899), S. 59, SCH. I, ART. 35, CL. (*a*), SUB-CL. (iii).
I. L. R. 37 Bom. 434

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10 **I. L. R. 38 Mad. 867**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 108 (j) **I. L. R. 37 All. 144**

——— by wife, repudiation of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10. **I. L. R. 38 Mad. 867**

——— construction of—

See RESUMPTION.
I. L. R. 39 Bom. 279

——— forfeiture of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXII, R. 10.
I. L. R. 39 Bom. 568

——— of palmyra juice—

See REGISTRATION ACT (III OF 1877), S. 17 (*1*), ETC. **I. L. R. 38 Mad. 883**

——— repudiation of—

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 91 . **I. L. R. 38 Mad. 321**

——— *Reclamation of—Rent if enhancible beyond the maximum fixed.* When land was let out for purposes of reclamation to be effected by the lessees at their expense, though the lessors also undertook to make a contribution thereto, and was to be held for the first four years without rent which was thereafter to be progressive till a maximum was reached, and there was no provision for a further rise, the reasonable inference to draw from these circumstances was that the parties intended that when the specified maximum was reached, there would be no further increase. KATYAYANI DEBI *v.* PORT CANNING AND LAND IMPROVEMENT CO. (1914) . **19 C. W. N. 56**

LEASE IN PERPETUITY.

——— validity of—

See MUTT, HEAD OF.
I. L. R. 38 Mad. 356

LEAVE TO APPEAL TO PRIVY COUNCIL.

——— *Application—Civil Procedure Code (Act V of 1908) s. 110—Computation of time—Limitation Act (IX of 1908) s. 12, whether* ultra vires—*Legislative powers of the Governor-General in Council—Order in Council, 1838—Government of India Act, 1858 (21 & 22 Vict. c. 106) s. 64—Indian Councils Act, 1861 (24 & 25 Vict. c. 67)—Letters Patent, 1865, ss. 39, 44.* S. 12 of the Limitation Act of 1908 applies to applications for leave to appeal to His Majesty in Council. S. 12, sub-cl. (2) which enacts that "in com-

LEAVE TO APPEAL TO PRIVY COUNCIL— *concld.*

puting the period of limitation prescribed for an application for leave to appeal . . . the time requisite for obtaining a copy of the decree . . . appealed from . . . shall be excluded" was within the legislative powers of the Governor-General in Council, not being in contravention of s. 64 of the Government of India Act 1858, and is not *ultra vires*. *Eastern Mortgage and Agency Company, Limited* v. *Purna Chandra Sarbagna, I. L. R. 39 Calc. 510, Lakshmanan* v. *Periyasami, I. L. R. 10 Mad. 373, Anderson* v. *Periasami, I. L. R. 15 Mad. 169, In re Sita Ram Kesho, I. L. R. 15 All. 14, Thurai Rajah* v. *Jainilabdeen Rowthan, I. L. R. 18 Mad. 484, Moroba Ramchandra* v. *Ghanasham Nilkant Nadkarni, I. L. R. 19 Bom. 301, Motichand* v. *Ganga Parshad Singh, I. L. R. 24 All. 174; L. R. 29 I. A. 40*, referred to. ABDULLAH HOSSEIN CHOWDHURY *v.* ADMINISTRATOR-GENERAL OF BENGAL (1914).
I. L. R. 42 Calc. 35

LEGACY.

———— vesting of—

See SUCCESSION ACT (X OF 1865), S. 187.
I. L. R. 38 Mad. 474

LEGAL NECESSITY.

See HINDU LAW—ALIENATION.
I. L. R. 42 Calc. 876

See HINDU LAW—ALIENATION.
I. L. R. 37 All. 369

LEGAL REPRESENTATIVE.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 373.
I. L. R. 38 Mad. 643

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.
I. L. R. 38 Mad. 1076

See DEFENDANT, DEATH OF.
I. L. R. 38 Mad. 682

LEGATEE.

———— disclaimer by—

See SUCCESSION ACT (X OF 1865), S. 187 . . **I. L. R. 38 Mad. 474**

LEGITIMACY.

See DIVORCE . **I. L. R. 38 Mad. 466**

LEPROSY (ANŒSTHETIC).

See HINDU LAW—INHERITANCE.
I. L. R. 38 Mad. 250

LESSEE.

See MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876), S. 2.
I. L. R. 38 Mad. 1128

LESSEE OF RENT.

———— suit by—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10 . **I. L. R. 38 Mad. 867**

LESSEES FROM BOMBAY GOVERNMENT.

———— rights of—

See KASBATIS . **I. L. R. 39 Bom. 625**

LESSOR.

See MALABAR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900), SS. 3 AND 5.
I. L. R. 38 Mad. 954

LESSOR AND LESSEE.

1. ———— *Assignment by lessee—Assignee's right to apportionment, as against lessor—Transfer of Property Act (IV of 1882), ss. 36 and 108—Apportionment in English Law, under Statute Law in England and under the English Common Law—Rent—Interest accrues de die in diem, English Statute Law, principle of, to be followed in India—No Statute Law in India—Apportionment as between lessor and lessee's assignee.* An assignee from a lessee is entitled to claim as against the lessor apportionment of rent accruing due after the date of assignment to him up to the time of a transfer (if any) of his interest as assignee to a third person. There is privity of estate between the lessor and the assignee, and the latter is bound to perform the covenants of the lease after the assignment. Possession is not the ground of his liability but the privity of estate which is created by the assignment itself. It is settled law that the privity of estate between the lessor and the lessee's assignee is terminated by an assignment by the latter of his interest to a third person. On principle there seems to be no reason why an assignee should not be entitled to apportionment as between himself and the lessor, and why rent should not be deemed to accrue due from day to day as between them. In England the Law of apportionment has long been regulated by statutes, and all rents, etc., are, like interest on money lent, considered as accruing from day to day and apportionable in respect of time accordingly. In India there is no reason for not applying to rent the principle adopted in England in the case of interest. KUNHI SOU *v.* MULLOLI CHATHU (1912) . . **I. L. R. 38 Mad. 86**

2. ———— *Forfeiture for non-payment of rent—Joint lessors—Separation of their ownership in the lands—Receipt by one of the joint lessors of his share of rent from the lessee—Right of the other joint lessor to enforce the forfeiture—No act done by the lessor previous to the institution of the suit to determine the lease—Election previous to suit not necessary—Waiver—Transfer of Property Act (IV of 1882), s. 111, cl. (g)—Right of re-entry under the old English Common law.* One of several joint lessors who had become separately entitled to his share of the lands leased, is entitled to enforce the forfeiture clause in the lease-deed separately as regards his share of the lands. *Sri Raja Simhadri Appa Rao* v. *Prattipati Ramayya, I. L. R. 29 Mad. 29*, followed. *Gopal Ram Mohuri* v. *Dhakeswar Pershad, I. L. R. 35 Calc. 807*, dissented from. Mere breach by the lessee of a covenant involving forfeiture contained in a lease of lands executed for agricultural

LESSOR AND LESSEE—*concld.*

purposes, gives a sufficient cause of action to the lessor to bring the suit in ejectment, and it is not necessary that the lessor should do some act showing his intention to determine the lease before he brings his suit in ejectment. *Venkataramana Bhatta* v. *Gundaraya, I. L. R. 31 Mad. 403*, distinguished. *Padmanabhayya* v. *Ranga, I. L. R. 34 Mad. 161*, followed. *Per* SADASIVA AYYAR, J. As the breach of the condition gives rise to a cause of action at once, there is strictly no question of election between two different rights but there is only an election whether the lessor is to retain the right created by the breach or to give up the right. The retention requires no definite physical act while the waiver does. KORAPALU *v.* NARAYANA (1913)
I. L. R. 38 Mad. 445

LETTERS OF ADMINISTRATION.

See ADMINISTRATOR-GENERAL'S ACT (II OF 1874), SS. 20, 52, 54.
I. L. R. 38 Mad. 1134

See PROBATE AND ADMINISTRATION ACT (V OF 1881), S. 50.
I. L. R. 37 All. 380

LETTERS PATENT, 1865.

See AMENDED LETTERS PATENT.

——— **cl. 12**—

See JURISDICTION.
I. L. R. 42 Calc. 942

——— cl. 15—

See APPEAL . **I. L. R. 42 Calc. 735**

——— cl. 26—Review of criminal case decided by High Court in Original Criminal Jurisdiction on certificate of Advocate-General. KING-EMPEROR *v.* UPENDRA NATH DASS (1914)
19 C. W. N. 653

——— cl. 32—

See ARREST OF SHIP.
I. L. R. 42 Calc. 85

——— cls. 39, 44—

See LEAVE TO APPEAL TO PRIVY COUNCIL.
I. L. R. 42 Calc. 35

LIABILITY.

See BILL OF LADING.
I. L. R. 38 Mad. 941

See VARTHAMANAM.
I. L. R. 38 Mad. 660

LICENSE.

See EASEMENTS ACT (V OF 1882), SS. 59 AND 60. **I. L. R. 37 All. 91**

See TRADE-MARK. **I. L. R. 42 Calc. 262**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 108 (*j*).
I. L. R. 37 All. 144

LIFE ESTATE.

See JAIGIR . **I. L. R. 42 Calc. 305**

LIFE INTEREST.

See HINDU LAW—WILL.
I. L. R. 42 Calc. 561

LIGHT AND AIR.

See EASEMENT . **I. L. R. 42 Calc. 43**

LIGHTERS OR BOATS.

See BILL OF LADING.
I. L. R. 38 Mad. 941

LIMITATION.

See CHEQUE, PAYMENT BY.
I. L. R. 42 Calc. 1043

See CIVIL PROCEDURE CODE (1908), S. 48.
I. L. R. 37 All. 638

See CRIMINAL PROCEDURE CODE, S. 476.
I. L. R. 37 All. 344

See DECREE NISI. **I. L. R. 39 Bom. 175**

See DISTRICT MUNICIPAL ACT (BOM. ACT III OF 1901), SS. 2, 46 AND 167.
I. L. R. 39 Bom. 600

See EXECUTION OF DECREE.
I. L. R. 37 All. 527

See EXECUTION PROCEEDINGS.
I. L. R. 37 All. 518

See HINDU LAW—INHERITANCE.
I. L. R. 42 Calc. 384

See HINDU LAW—MORTGAGE.
I. L. R. 42 Calc. 1068

See INJUNCTION. **I. L. R. 42 Calc. 550**

See LIMITATION ACT (XV OF 1877).

See LIMITATION ACT (IX OF 1908).

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 62. **I. L. R. 37 All. 40, 233**

See MADRAS LAND ENCROACHMENT ACT (III OF 1905) **I. L. R. 38 Mad. 674**

1. ——— *Application made out of time, entertained by Court without adjudication of question of limitation—Revision by High Court.* Where the Court entertained an application which on the face of it was time-barred without adjudication of the question of limitation it acted with material irregularity in the exercise of its jurisdiction, and the High Court could in such a case interfere in revision, though it might not do so if the Court had considered the question of limitation and decided it erroneously. TARA SANKAR GHOSH *v* BASIRUDDI (1915)
19 C. W. N. 970

2. ——— *Admission in a previous suit of liability for a debt—Debt barred at the date of admission—No estoppel from pleading, in a subsequent suit—Plea of limitation, agreement against or waiver of—Estoppel against an act of the legislature—Difference between the English and the Indian law—Limitation Act (Act IX of 1908), s. 3, arts. 74, 75, 80 and 120—Instalment bond—Default in payment of instalments, meaning*

LIMITATION—*contd.*

of—Tender by debtor—Refusal of acceptance by creditor, no default—Waiver. The plaintiff released his interest in a certain business in favour of the defendants for a consideration of Rs. 30,000, for which the defendants executed to the plaintiff on the same date (12th December 1904) a promissory note payable by monthly instalments of Rs. 1,000, the whole sum being recoverable in the event of three successive defaults. After sixteen instalments were paid, the plaintiff refused to receive further instalments tendered by the defendants but brought a suit in August 1906 to set aside the release deed on the ground that it had been obtained by fraud. The suit was dismissed and, on appeal, this dismissal was confirmed on 19th January 1910. In the Appellate Court an oral application was made on behalf of the plaintiff that a decree might be passed in that suit for the amount of the balance of the instalments. The defendants stated in the Court of Appeal that they were always ready and willing to pay the amount but pleaded that no decree could be passed in that suit for the amount and the Appellate Court refused to pass a decree for the same. The plaintiff then made a demand on the defendants on 25th January 1910 for the balance of the instalments due on the promissory note and on refusal by the defendants brought the present suit. The defendants pleaded the bar of limitation. The Trial Judge held that the defendants who had admitted their liability for the amount in resisting the plaintiff's application in the previous suit were estopped (though not under s. 115 of the Indian Evidence Act) on general principles of law and equity from pleading that the suit for the amount of the instalments was barred by limitation. The defendants appealed: *Held* (on appeal), that the defendants were not estopped from pleading that the suit was barred by limitation. *Rangayya Appa Rau* v. *Narasimha Appa Rau, I. L. R. 19 Mad. 416, Khetra Mohan Chatterjee* v. *Mohim Chandra Dos, 17 C. W. N. 518,* referred to. *Seshachala Naicker* v. *Varada Chariar, I. L. R. 25 Mad. 55,* and *Baij Nath Ram Goenka* v. *Hem Chunder Bose, 10 C. W. N. 959,* distinguished. *Mohummud Zahoor Ali Khan* v. *Mussumat Thakooranee Rutta Koer, 11 Moo. I. A. 468,* explained. There can be no estoppel against an act of the legislature. *Jagadbandhu Saha* v. *Radhakrishna Pal, I. L. R. 36 Calc. 920,* and *Abdul Aziz* v. *Kantha Mallick, I. L. R. 38 Calc. 512,* referred to. Under the Indian law parties cannot waive or contract themselves out of the law of limitation. Art. 75 of the second schedule of the Limitation Act (Act IX of 1908) is not applicable to the case because there was no default within the meaning of the article on the part of the defendants in the payment of the instalments but there was only a refusal on the part of the plaintiff to receive the instalments tendered by the defendants. Art. 74 of the Limitation Act, and not art. 120 was applicable to the case and accordingly the suit as to nine out of the fourteen instalments was barred by limitation. Difference between the English and the Indian law as to the plea of limitation pointed out. *Per* WHITE, C. J.—Assuming there was default, the plaintiff waived the benefit of the provision when he repudiated the agreement which gave him the benefit of the provision. *Per* OLDFIELD, J.—Mere absence of completed payments for which the debtors have not been responsible, cannot be treated as equivalent to the default referred to in the first column of art. 75. Where there is no default in payment the question of waiver of the benefit of the provision for immediate payment does not arise. Art. 75 must be held applicable only to the class of suits in which a default has occurred and in which the provision as to waiver may be material. Article 74 or the more general article 80 is applicable to this case. SITHARAMA *v.* KRISHNASWAMI (1913) . . . . **I. L. R. 38 Mad. 374**

LIMITATION—*contd.*

3. *Limitation Act (IX of 1908), Sch. I, Art. 124—(Act XV of 1877), Sch. II, Art. 124—Hereditary office of shebait—Successor of shebait when bound by decree against predecessor in shebaitship—Decree-holder and purchaser at sale in execution who by reason of low caste is not competent to hold office of shebait—Adverse misappropriation of temple income by trespasser incompetent to be shebait—Wrongful possession not constituting wrongful holder shebait—Res judicata.* This was an appeal from the decision of the High Court in the case of *Jharula Das* v. *Jalandhur Thakur, I. L. R. 39 Calc. 887,* in which the widow of the shebait of a temple (the shebaits of which were Brahmin Pandas) who succeeded her deceased husband in that office, mortgaged land together with her interest in the income of the temple to the defendant (who was not a Brahmin). The defendant obtained a decree on his mortgage on 24th September 1880, in execution of which he put up for sale the share of the temple income, purchased it himself, and got delivery of possession in 1892. The widow died in May 1900. In a suit brought on 28th January 1910 for the land and mesne profits, and for a declaration that the plaintiff was entitled to receive the share of the temple income as it was inalienable, the defence was that the suit, so far as it related to the temple income, was barred as being *res judicata,* and by limitation. *Held,* by the Judicial Committee (reversing the decision of the High Court), that Art. 124 of the Limitation Act was not applicable. The suit was not one for an hereditary office which could not be held by a person who was not a Brahmin, and the defendant was therefore not competent to hold the office of shebait, and had not taken possession of it. By adversely taking and appropriating to his own use a share of the surplus daily income from the offerings, the defendant acquired no title, and no right to a share of that income. On each occasion on which he received and wrongfully appropriated to his own use a share of the income to which the shebait was entitled, the defendant committed a fresh actionable wrong in respect of which a suit could be brought against him by the shebait; but it did not constitute him the shebait for the time being, or affect in any way

LIMITATION—*contd.*

the title to the office. *Held*, also, that the defence (which had been upheld by the High Court) that the suit was barred as *res judicata* by the decision in a former suit brought by the widow to set aside the sale of the temple income, was not maintainable. JALANDHAR THAKUR *v.* JHARULA DAS (1914) . . **I. L. R. 42 Calc. 244**

4. ——— *Mortgage suit—Civil Procedure Code (Act V of 1908), O. XXXIV, rr. 3 and 6—Limitation Act (IX of 1908) Sch. I, Art. 181—Transfer of Property Act (IV of 1882) s. 90—Personal covenant.* The plaintiff in a mortgage suit, who has his personal remedy at the date of the institution of the suit, would not lose his personal right by reason of his not having made the application for personal decree under O. XXXIV, r. 6 within three years of the date of the confirmation of the mortgage sale, since applications under O. XXXIV, r. 6, are not governed by Art. 181 of the Limitation Act any more than an application for order absolute under O. XXXIV, r. 3. *Rahmat Karim* v. *Abdul Karim, I. L. R. 34 Calc. 672*, and *Madhabmoni Dasi* v. *Pamela Lambert, 12 C. L. J. 328*, referred to. BISWAMBHAR SHAHA *v.* RAM SUNDAR KAIBARTA (1914)

I. L. R. 42 Calc. 294

5. ——— *Limitation Act (IX of 1908), s. 15 (2), applicability of—Special Acts, suits under—Madras Revenue Recovery Act (II of 1864), s. 59, suits under.* S. 15, cl. (2) of the Limitation Act (IX of 1908) which excludes from the computation of the period of limitation, the time occupied by the notice legally necessary to be issued before instituting certain actions is applicable to suits brought under s. 59 of the Madras Revenue Recovery Act (II of 1864). *Venkata* v. *Chengadu, I. L. R. 12 Mad. 168*, and *Iswara Pattar* v. *Karuppan, 3 Mad. L. J. 255*, followed. *Abu Baker Sahib* v. *Secretary of State for India, I. L. R. 34 Mad. 505*, distinguished. The question whether the general provisions of the Limitation Act should be applied to cases where a special period of limitation is prescribed by a special or local Act depends on whether the provisions of such Act should be regarded as enacting a complete body of provisions with regard to limitations of suits coming within the purview of the Act. In other words the question is whether the special or local Act should be construed as excluding the applicability of the general provisions of the Limitation Act. SRINIVASA AYYANGAR *v.* SECRETARY OF STATE (1912)

I. L. R. 38 Mad. 92

6. ——— *Madras Estates Land Act (I of 1908), ss. 210, 211, cl. (2), Art. 8 of Sch., Part A—Suit for rent under registered agreement, more than three years but less than six years of the Act coming into force—Statutes—Construction—Retrospective operation, when—Limitation Act (XV of 1877), art. 116, applicability of suits for rent in a Revenue Court.* A suit to enforce an inamdar's right to rent under a registered agreement which accrued due more than three years but less than six years before the Estates Land Act came into

LIMITATION—*concld.*

force is not barred by the Limitation of three years enacted by its provisions but is governed by art. 116 of the Limitation Act. S. 210 and art. 8 of Part A to the schedule of the Madras Estates Land Act (I of 1908) have no application to cases where the period of three years thereby provided had expired before the 1st July 1908 when the Act came into force and where to apply them would be to deprive the plaintiff of a right of action which was then vested in him. The rule regarding vested rights is not confined to substantive rights but extends equally to remedial rights or rights of action including rights of appeal. Retrospective operation of statutes considered. *Colonial Sugar Refining Company* v. *Irving*, [*1905*] *A. C. 369*, applied. RAMAKRISHNA CHETTY *v.* SUBBARAYA IYER (1912) **I. L. R. 38 Mad. 101**

7. ——— *Preliminary Mortgage-decree—Limitation Act (IX of 1908) Sch. I, Arts. 180, 183—Application for sale of mortgaged property under decree—Transfer of Property Act (IV of 1882) ss. 85 to 89—Civil Procedure Code (Act V of 1908), O. XXXIV, rr. 4, 5.* In this case their Lordships of the Judicial Committee affirmed the decision of the High Court in *Amlook Chand Parrack* v. *Sarat Chunder Mukerjee, I. L. R. 38 Calc. 913*, that an application for an order absolute for sale under a mortgage decree is an application "to enforce a judgment or decree" within the meaning of Art. 183 of Sch. I of the Limitation Act (IX of 1908), and is therefore barred if not made within the period prescribed by that Article. MUNNA LAL PARRACK *v.* SARAT CHUNDER MUKERJI (1914) . **I. L. R. 42 Calc. 776**

8. ——— *Registration Act (XVI of 1908), s. 77—Thirty days after passing of decree, under—Computation of, for the purpose of that section—Civil Procedure Code (Act V of 1908), O. XX, r. 7.* For the purposes of s. 77 of the Registration Act (XVI of 1908) the period of thirty days within which a document has to be presented for registration after the passing of a decree of Court directing its registration, is to be reckoned not from the date the decree bears but from the time it was actually drawn up and signed by the Judge. *Per* CURIAM. It is desirable that in decrees of this nature the Judge should put the date on which they are signed by him under O. XX, r. 7, Civil Procedure Code (Act V of 1908). MUTHIA CHETTI *v.* SUPPAN SERVAI (1913)

I. L. R. 38 Mad. 291

LIMITATION ACT (XV OF 1877).

——— **ss. 7 and 8 and Art. 44**—*Alienation by guardian of the property of two wards, members of an undivided Hindu family—Suit by both more than three years after elder's majority but within three years of the younger attaining majority—Limitation.* According to ss. 7 and 8 and art. 44 of the Limitation Act (XV of 1877), a suit brought by two brothers of an undivided Hindu family to set aside an alienation by their guardian, more than three years after the elder attained majority is barred by limitation not only as regards the elder

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 7**—*concld.*

brother's share but also in respect of the younger brother's though the latter attained his majority within three years prior to the institution of the suit. DORAISAMI SERUMADAN *v.* NONDISAMI SALUVAN (1912) . . **I. L. R. 38 Mad. 118**

——— **Sch. II, Art. 12**—

See MUTT, HEAD OF.

I. L. R. 38 Mad. 356

——— **Arts. 36, 115 and 120**—*Contract to sell another's goods without authority, breach of—Cause of action only in contract and not in tort as on misrepresentation—Contract Act (IX of 1872), s. 235.* A suit against a person for breach of contract to sell to the plaintiff certain goods of another on the implied representation that he had authority from his principal to sell them, when in fact he had none, is not one arising in tort or independent of contract but one arising out of and incident to a contract and is governed by Art. 115 of the Limitation Act (XV of 1877) and not by Art. 36 or 120. S. 235 of the Contract Act, discussed. VAIRAVAN *v.* AVICHA (1913) . . . . **I. L. R. 38 Mad. 275**

——— **Art. 91**—*Undue influence—Lease, suit to set aside, on the ground of,—Applicability of the Article—Suit for possession—Whether setting aside lease by decree of Court necessary—Repudiation of lease by the plaintiff, if sufficient—Suit for setting aside lease if barred, suit for possession also barred—Trusts Act (II of 1882), ss. 86, 89, 90, 91 and 96—Transfer of Property Act (IV of 1882), s. 126—Contract Act (IX of 1872), ss. 64 and 66—Custom of inalienability in a zamindari, onus of proof as to—Evidence, nature of.* Where the plaintiff sued in 1904 to recover possession of certain lands which had been leased by his deceased father under two registered lease-deeds, dated 5th November 1889 and 2nd June 1893, respectively to the deceased father of the defendants, on the ground that the leases were obtained by undue influence exercised by the father of the defendants on the plaintiff's father, and the father of the defendants had died in 1899 : *Held*, that the suit was barred by limitation under art. 91 of the Limitation Act (XV of 1877). A transfer which is voidable and which can be effected only by a registered instrument can be avoided only by a formal re-transfer or by a decree of Court. *Janki Kunwar* v. *Ajit Singh, I. L. R. 15 Calc. 58*, explained and applied. S. 86 of the Indian Trusts Act, even if it were applicable to the case, is not available to the plaintiff because there was no allegation in the plaint that a notice of rescission was given to the defendants or their father before the suit, and the suit, itself can operate as a notice to the defendants only when a copy of the plaint was served on them after the suit was duly instituted. The defendants therefore were not trustees at the date of the suit, and the right to immediate possession had not then vested in the plaintiff by virtue of the said section. Ss. 86 and 89 of the Indian Trusts Act are not applicable because

LIMITATION ACT (XV OF 1877)—*contd.*

——— **Sch. II**—*contd.*

——— **Art. 91**—*concld.*

s. 96 of the said Act will operate to prevent their application as it enacts that no obligations under Chapter IX of the Trusts Act (which contains ss. 86 and 89) can be created in evasion of the provisions of any law. *Per* SADASIVA AYYAR, J.—A unilateral expression of a rescission of a contract by one of the parties to the contract does not relieve him from his obligation to have the contract rescinded by Court under the substantive law of the land and within the time allowed by the statutory law, if he wants, as plaintiff, the assistance of the Court in obtaining certain reliefs on the basis that the contract has ceased to exist. The wide phrases 'hold the property' (s. 86, Trusts Act), or 'hold the advantage' (s. 89, Trusts Act) for the benefit of the transferor do not create at once an enforceable as distinguished from an establishable trust in favour of the transferor. Property in the hands of a mere constructive trustee does not become the property of the beneficiary under the constructive trust so as to enable him to treat it as such without a judicial declaration of trust. A defendant, though his right to bring a suit for rescission of a contract or lease may be barred, might be permitted to defend his possession of properties by showing that the contract or lease so voidable at his instance has been repudiated by him. *Lakshmi Doss* v. *Roop Laul, I. L. R. 30 Mad. 169*, referred to. The onus of proving inalienability in the case of a zamindari lies on the person who alleges it. *Sundaram* v. *Sitammal, I. L. R. 16 Mad. 311*, dissented from. A perpetual lease, reserving no rent to the Zamindar except a sum which was payable wholly to the Government towards the revenue due on the leased lands, is really an absolute conveyance of the properties. The case law on the subjects reviewed. RAJA RAJESWARA DORAI *v.* ARUNACHELLAN CHETTIAR (1913) **I. L. R. 38 Mad. 321**

——— **Art. 120**—*Suit by an ex-trustee for reimbursement, governed by—Rights of bonâ fide de facto trustees for bonâ fide expenses.* A trustee of a public trust has a first charge on the trust properties for the purpose of reimbursing himself advances properly made for the trust and art. 120 and not art. 132 of the Limitation Act (XI of 1877) is the one applicable to a suit for recovery of monies so spent ; and the right to sue does not accrue before the date on which he judicially declared to be no longer a lawful trustee (though it may well be that it does not accrue till he is dispossessed of the trust estate in pursuance of the judicial declaration). *Peary Mohun Mukerjee* v. *Narendra Nath Mukerjee, I. L. R. 37 Calc. 229*, followed. The expenses of a suit in which a person posing himself to be a trustee unsuccessfully resists another's right to be the trustee cannot be allowed as a proper charge on the trust property. *Obiter :* The time occupied in defending such a suit as the rightful trustee when no counter-claim is made therein for reim-

LIMITATION ACT (XV OF 1877)—*contd.*

Sch. II—*contd.*

Art. 120—*contd.*

bursement of the expenses made by him but only a claim to remain in possession for such expenses cannot be deducted in his favour under s. 14 of the Limitation Act. *Maharajah Jugutendur Bunwaree* v. *Din Dyal Chatterjee, 1 W. R. 309,* followed. *Per* SADASIVA AYYAR, *J.*—Art. 61 is applicable only to an ordinary suit for a simple decree for money but not for a suit where the prayer of the plaint is for recovery of the plaint amount out of the income of and on the liability of certain properties. Art. 120 is the proper article applicable, and the right of suit does not begin until the trustee is dispossessed. A trustee has not only got a right to reimburse himself out of the rents and profits of the trust property, but has also a charge thereon including its *corpus,* which can be enforced only by an order prohibiting any disposition of the trust property, without previous payment of expenses properly incurred by him. He is not entitled to enforce his right by a sale of the trust property. A person, who is a *de facto* trustee, but who *bonâ fide* thinks himself to be *de jure* trustee, is entitled to reimbursement of all expenses properly encumbered by him, just like a *de jure* trustee. Even a *de facto* trustee or a trustee *de son tort* is entitled to be reimbursed for all the *necessary* expenses in respect of the trust estate. *Obiter :* A trustee is entitled to remain in possession until he is reimbursed in respect of all proper charges incurred by him. ABKAN SAHIB *v.* SORAN BIVI SAIBA AMMAL (1913) . . **I. L. R. 38 Mad. 260**

Arts. 120, 125—*Applicability of—Suit by one adopted later to set aside his maternal grandmother's alienation after her death—Attestation and ratification by next presumptive reversioners to a female's alienation, effect of.* A Hindu widow sold the suit properties in 1881 and 1889 and died in 1899. Her daughter adopted the plaintiff in 1903 and he sued in 1907 to set aside the sales during the life-time of his adoptive mother. *Held* that (*a*) the suit was not barred, (*b*) art. 120 and not 125 of the Limitation Act was applicable and (*c*) the cause of action for the plaintiff to question sales arose only from the date of his adoption when alone he became a reversioner. Of the two sales in this case, the first was assented to by the daughters and attested by the next male reversioner ; the second was acquiesced in by the daughters and in 1894 ratified by the then presumptive male reversioner. *Held,* that the plaintiff was estopped under the circumstances from questioning the sales as a reversioner. For the application of art. 125 of the Limitation Act, (*a*) the suit must be one brought during the life-time of the alienating female and (*b*) the plaintiff must be the person entitled to the possession of the land if the female died at the date of the institution of the suit. *Chiruvolu Punnamma* v. *Chiruvolu Perrazu, I. L R. 29 Mad. 390,* explained and distinguished. *Gajjala Veerayya* v. *Gajjala Gangramma 1912 Mad. W. N. 912, Abinash Chandra*

LIMITATION ACT (XV OF 1877)—*concld.*

Sch. II—*concld.*

Art. 120—*concld.*

Mazumdar v. *Harinath Shah, I. L. R. 32 Calc. 62, 71,* and *Govinda Pillai* v. *Thayammal, I. L. R. 28 Mad. 57,* followed. *Per* SADASIVA AYYAR, *J.* Consent to an alienation by the next reversioner and a ratification of past alienations stand on the same footing. Effect of attestation by a reversioner to a female's alienation considered. NARAYANA *v.* RAMA (1913) . . **I. L. R. 38 Mad. 396**

Arts. 120, 132—

See HINDU LAW—MORTGAGE.
I. L. R. 42 Calc. 1068

Arts. 142, 144—

See MUTT, HEAD OF.
I. L. R. 38 Mad. 356

Art. 146-A—

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

Art. 164—

See LIMITATION ACT (IX OF 1908), SCH. I ART. 164. . **I. L. R. 37 All. 597**

Art. 179—

1. ——— *Limitation Act (IX of 1908), Sch. I, Art. 182—Civil Procedure Code (Act XIV of 1882), ss. 351 and 357—Decree on mortgage—Application for execution—Mortgagor's petition for declaration of insolvency—Opposition by mortgagee judgment-creditor—Step-in-aid of execution—Limitation.* An application by mortgagee judgment-creditor in execution of his decree, opposing the insolvency proceeding of the mortgagor judgment-debtor, is a step-in-aid of execution under Art. 179, Sch. II of the Limitation Act (XV of 1877), and Art. 182, Sch. I of the Limitation Act (IX of 1908). LAXMIRAM LALLUBHAI *v.* BALASHANKAR VENIRAM (1914)
I. L. R. 39 Bom. 20

2. ——— *Execution, step-in-aid of—Application, oral, for adjournment.* An application to take a step-in-aid of execution under Art. 179 of the Limitation Act need not be in writing. *Amar Singh* v. *Tika, I. L. R. 3 All. 139* and *Monekdal Jagjivan* v. *Nasia Raddha, I. L. R. 15 Bom. 405,* followed. An application by the decree-holder for an adjournment to enable him to produce records or evidence necessary to effectively conduct the execution proceedings further is an application to get an order in aid of execution. *Sheshdasacharya* v. *Bhimacharya, 14 Bom. L. R. 1204, Haridas Nanabhai* v. *Vithaldas Kisandas, I. L. R. 36 Bom. 638, Pitam Singh* v. *Tota Singh, I. L. R. 29 All. 301,* and *Kunhi* v. *Seshagiri, I. L. R. 5 Mad. 141,* referred to. ABDUL KADER ROWTHER *v.* KRISHNAN MALAVAL NAIR (1913)
I. L. R. 38 Mad. 695

LIMITATION ACT (IX OF 1908).

——— s. 4—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192 **I. L. R. 38 Mad. 295**

——— s. 4, Arts. 74, 75, 80 and 120—

See LIMITATION **I. L. R. 38 Mad. 374**

——— s. 5—

See APPEAL. **I. L. R. 42 Calc. 433**

1. ——— *Appeal filed out of time—Time taken by infructuous review if to be excluded—Laches—Court's discretion if should be fettered by rules.* The time taken by the appellant in an infructuous application for review will not be excluded if the grounds of review were only grounds of appeal, nor does a mere routine order registering an application for review constitute the *bonâ fide* prosecution of a civil litigation. The discretion of the Appellate Court to admit appeals filed out of time on cause shown ought not to be crystalised into definite rules so as to fetter that discretion. *Held*, in the circumstances of the present case, that the appeal should be registered. SUDHAKAR RAUT *v.* SADASIVA JHATAP SINGH (1915) . . . **19 C. W. N. 1113**

2. ——— *Limitation Appeal—Discretion of Court—Barrister—Liability for negligence. Held*, that an appeal will lie on the question of limitation where the lower Appellate Court in admitting the appeal to it under s. 5 of the Indian Limitation Act has not exercised a judicial discretion. The mere fact that the papers of the case and a fee of some sort had been left with a legal practitioner in order that he might file an appeal, but that he had not done so and had returned the paper only after the expiry of the period of limitation, would not be in itself a sufficient ground for admitting an appeal 37 days beyond time. *Per* RICHARDS, *C. J. Semble:* that if an advocate who is a barrister or other professional gentleman receives and accepts instructions to file an appeal or make an application and the client loses his right to appeal or make the application as the result of the negligence of the barrister or practitioner to file the appeal or application within time, such barrister or vakil would be liable to his client in a Court of law. BUDDHU *v.* DIWAN (1915) **I. L. R. 37 All. 267**

——— s. 6—

See CIVIL PROCEDURE CODE (1908), s. 48. **I. L. R. 37 All. 638**

——— ss. 6, 8, 9—*Disqualifications saving limitation—Management of estate by Court of Wards if saves limitation.* Under the Limitation Act, 1908, no other cause of disqualification than those mentioned in the Act can be admitted to save limitation and the only disqualifications that ss. 6, 8 and 9 of the Act recognise are minority, insanity and idiocy and the suit as regards the properties comprised in the *kobala* of 1890 was barred by limitation under Arts. 91 and 142 of the Act.

LIMITATION ACT (IX OF 1908)—*contd.*

——— s. 6—*concld.*

The fact that the plaintiff was a disqualified proprietor whose estate was under the charge of the Court of Wards did not prevent the running of time against her during the period the Court remained in charge. KUARMONI SINGHA *v.* WASIF ALI MEERZA (1915) . . **19 C. W. N. 1113**

——— s. 10, effect of—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 92 AND 93. **I. L. R. 38 Mad. 1064**

——— s. 10, Sch. 1, Arts. 14, 120—*Deposit—Order of the Collector refusing payment vested in trust—Specific purpose—No bar of time for recovery* In 1835, C, an ancestor of the plaintiffs, had his immoveable property sold to satisfy his debt by the then Maharaja of Satara. Out of the sale-proceeds the debt was paid off and the balance of Rs. 1,793-0-5 was credited in the Government Treasury in the name of C. Subsequently when the Satara Principality ceased in the year 1848 the said amount came to be credited in C's name in the British Treasury. In 1859 C's descendants applied to the British Government for a refund of the amount when it was ordered that the amount be refunded after production of heirship certificate by the applicants and the order was communicated to the then applicants. Subsequently for a number of years there were litigations in Civil Court between C's descendants and the purchasers of C's property as regards the validity of sale. Ultimately in 1906 M, the father of the plaintiffs, made an application to the District Court for a certificate of heirship and an order for the issue of a certificate was passed on the 23rd March 1907. M then made an application on 16th October 1907 to the Collector of Satara requesting for a refund of the amount of Rs. 1,793-0-5 standing credited in C's name. This application was decided against the plaintiffs by the Collector on 6th March 1911. The plaintiffs then appealed to the Commissioner and the appeal was rejected on 17th July 1911. A further appeal to the Government met with a similar fate. Plaintiff, therefore, on 15th June 1912 filed a suit against the defendant as trustee for the recovery of the amount alleging that the cause of action arose on 17th July 1911, the date when the Commissioner's order was received by the plaintiffs. The defendant contended that the cause of action arose on 6th March 1911 when the Collector rejected the plaintiffs' application and the suit was barred under Arts. 14 and 120 of Sch. I of the Limitation Act (IX of 1908). The lower Court being of opinion that the money was at most held by the defendant on an implied trust held that s. 10 of the Limitation Act did not apply to the case and that the plaintiffs' claim could only be decreed on the ground that it was within time under Art. 120 of the Limitation Act. The defendant having appealed to the High Court. *Held*, that the money being vested in the Government when it took over the Satara Treasury in 1848 and the purpose of

LIMITATION ACT (IX OF 1908)—*contd.*

——— s. 10—*concld.*

the credit in the name of C, being specific, s. 10 of the Limitation Act did apply. *Held*, further, that the plaintiffs were entitled to succeed on the ground not only that their claim did not fall within Article 14 and would be within time if it fell within Art. 120, but that it was one to which the bar of limitation could not be pleaded. SECRETARY OF STATE FOR INDIA *v.* BAPUJI MAHADEO (1915) . . . **I. L. R. 39 Bom. 572**

——— s. 12—

See LEAVE TO APPEAL TO PRIVY COUNCIL.
I. L. R. 42 Calc. 35

——— s. 15 (*2*)—

See LIMITATION . **I. L. R. 38 Mad. 92**

——— s. 18—*Conditions to be fulfilled before invoking section—Application for setting aside sale on the ground of fraud—Fraud subsequent to sale if necessary to be established.* S. 18 of the Limitation Act provides that where a person having a right to make an application has by means of fraud been kept from the knowledge of such right of the title on which it is founded the time limited for making the application against the person guilty of the fraud or accessory thereto shall be computed from the time when the fraud first became known to the person injuriously affected thereby. Consequently whoever desires to avail himself of s. 18 has to establish in the first place that there has been fraud; and in the second place that by means of this fraud he has been kept from the knowledge of his right to make an application, but it is not essential to prove that there has been fraud subsequent to the date of sale. JATINDRA MOHAN RAI CHAUDHURI *v.* BROJENDRA KUMAR DATTA (1914).
19 C. W. N. 553

——— s. 19—

1. ——— *Acknowledgment of debt.* A letter to the effect that the writers "after looking into the account will sign it" is not an acknowledgment of liability on an account stated within the meaning of s. 19 of the Limitation Act. BHAIRO PROSAD *v.* GOJADHAR PROSAD SAHU (1914) **19 C. W. N. 170**

2. ——— *Acknowledgment of plaintiff's title in statement of boundary of neighbouring land in kabuliyat executed by defendant in favour of third party.* Where in stating the boundaries of lands included in a *kabuliyat* executed by the defendant in favour of a third party, he described the land in suit as plaintiff's: *Held*, that the statement amounted to an acknowledgment within the meaning of s. 19 of the Limitation Act. It is now settled that an acknowledgment, to whomsoever made, if it be an acknowledgment pointing with reasonable certainty to the liability in dispute or the right out of which that liability arises as a legal consequence is an acknowledgment of liability within the meaning of that section. *Maniram Seth* v. *Seth Rupchand*, *10 C. W. N. 874*: *s. c. I. L. R. 34 Calc. 1047*, *Majumdar Hiralal* v. *Desai Narasilal*, *17 C. W. N. 573*, *Imam Ali* v. *Baij Nath*, *I. L. R. 33 Calc. 613*, and *Mylapur Iyasawmy Moodaliar* v. *Yeo Kay*, *I. L. R. 14 Calc. 801*, considered. GURU CH. SAHA *v.* SURENDRA KRISTA RAY CHOWDRY (1913).
19 C. W. N. 263

——— ss. 19, 21—*Debt contracted by deceased co-parcener for no immoral purpose—Infant son if bound—Limitation—Acknowledgment of debt by karta if binds infant—Acknowledgment, if must be expressed as made by karta.* The *karta* of a joint Hindu family of which the defendant was a minor co-parcener was an agent duly authorised on his behalf so as to give an acknowledgment under s. 19 of the Limitation Act of a debt contracted by the Defendant's father for other than an immoral purpose. The decisions in *Wajibun* v. *Kadir Buksh*, *I. L. R. 13 Calc. 292*, and *Chhato Ram* v. *Bilto Ali*, *3 C. W. N. 13*, to the contrary being inconsistent with the provisions of s. 21 of Act IX of 1908 are no longer good law. Such an acknowledgment need not be expressed as made in the capacity of *karta*. *Chinnaya Nayudu* v. *Gurunatham Chetty*, *I. L. R. 5 Mad. 169*, followed. HAR PROSAD DAS *v.* BAKSHI HARIHAR PROSAD SINGH (1915)
19 C. W. N. 860

——— s. 20—

See CHEQUE, PAYMENT BY.
I. L. R. 42 Calc. 1043

——— s. 20, Proviso—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 69.
I. L. R. 38 Mad. 438

——— ss. 20, 57, Sch. 1, Art. 57.—*Suit for money payable for money lent—Payment of interest saving limitation—Creditor's discretion to apply money received to oldest debt—Second appeal—Tender of evidence (bahi khata) at hearing.* The plaintiff brought a suit on the 28th May 1909 for money due on an adjustment of accounts. The plaintiff alleged that the last adjustment took place within three years from the date of the institution of the suit when the defendant promised to pay. The Courts below dismissed the suit. The District Judge in appeal however found that the defendant took a loan of Rs. 50 from the plaintiff on 21st June 1906, but he refused to give a decree for that amount, because the defendant paid Rs. 52 in 1907, although he believed the plaintiff's books and evidence to be genuine, and there was at the time of payment over Rs. 700 due from the defendant. In the High Court at the time of the hearing of the appeal the plaintiff produced an entry in his *bahi khata* showing that Rs. 43 was paid by the defendant on account of interest in 1907. *Held*, that a creditor cannot claim the benefit of s. 20 of the Limitation Act unless he can show that the payment was made on account of interest as such: there must be either some express declaration by the debtor or there must be

LIMITATION ACT (IX of 1908)—*contd.*

——— **s. 20**—*concld.*

circumstances from which such an intention on the part of the debtor may be inferred and in the absence of either, the payment of Rs. 52 did not operate to save limitation under s. 20. That under ss. 60 and 61 of the Contract Act the creditor may exercise his discretion and apply any money paid to him by the debtor in discharge of the oldest debt and the lower Appellate Court was in error in treating the Rs. 52 as a repayment of the recent loan of Rs. 50. That the High Court could not receive the entry in the plaintiff's *bahi khata* relating to the payment of Rs. 43 at this stage and could not pay any attention to it, inasmuch as it was not put in evidence before either of the lower Courts. BITARI RAM *v.* KANJI SINGH (1913) . . . . **19 C. W. N. 237**

——— **s. 22**—

1. ——— *Mortgage—Sale of mortgaged property—Suit against one of the heirs of the mortgagor—Subsequent addition of parties—Limitation Act (IX of 1908), s. 22.* One K, a Mahomedan, effected a simple mortgage in favour of V on the 23rd of June 1899, the mortgage debt becoming due on demand which was made on the 1st January 1900. K having died, a suit for sale of the mortgaged property was instituted by V against his minor son as a party in possession of the property on the 23rd of June 1911. The minor's guardian having alleged that K left other heirs, a widow and two daughters, applied on the 29th of January 1912 to have them added as parties and they were so added on the 12th February 1912. It was contended by the added defendants that the suit was barred as against them under s. 22 of the Limitation Act, 1908. This plea found favour with the lower Courts and the suit for sale was dismissed so far as the shares of the added defendants were concerned. On appeal to the High Court by the mortgagee. *Held*, that the money was specifically charged on the whole mortgaged property and the property was liable to be sold in satisfaction of the mortgage in priority to the satisfaction of any interest derived from the mortgagor subsequent to the date of the mortgage. The suit as originally filed was not instituted to enforce claims against shares in the hands of heirs; it was to enforce a mortgage lien binding on the whole property, in the hands of any heir of the mortgagor, and the addition of parties after the expiry of the time did not involve the dismissal of the suit under s. 22 of the Limitation Act (IX of 1908). *Guruvayya* v. *Dattatraya, I. L. R. 28 Bom. 11*, followed. VIRCHAND VAJIKARANSHET *v.* KONDU (1915)
I. L. R. 39 Bom. 729

2. ——— *Transference of party from one category to another.* The rule that a party transferred from the side of the defendants to that of the plaintiffs is not a new party to whom the provisions of s. 22 of the Limitation Act apply is an absolute rule. DWARKA NATH DAS *v.* MONMOHAN TAFADAR (1915) . **19 C. W. N. 1269**

LIMITATION ACT (IX OF 1908)—*contd.*

——— **s. 22, Cl. s. (1) and (2)**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 63.
I. L. R. 38 Mad. 535

——— **s. 22, Art. 12, Cl.** (b)—*Madras Rent Recovery Act (VIII of 1865), ss. 33, 35, 39 and 40—Sale for arrears of rent—Sale of kudivarem right—Suit to set aside sale—Parties to the suit—Purchaser, necessary party—Receiver of melvaramdars, added as supplemental defendant—Lapse of one year—Suit not barred—Execution sales—Proceedings to set aside—Decree-holder, necessary party—Civil Procedure Code (Act V of 1908), O. XXI, rr. 90, 91 and 93.* In a suit instituted under the Madras Rent Recovery Act, by the owners of the kudivaram right in certain lands to set aside a rent-sale of the kudivaram right, the purchaser at the rent-sale and the melvaramdars were originally joined as defendants; but on objection taken by the defendants a receiver appointed on behalf of the melvaramdars was added as a supplemental defendant more than one year after the date of the sale. The defendants thereupon pleaded that the suit was barred by limitation. *Held*, that in a suit under the Act neither the receiver nor any of the melvaramdars was a necessary party to the suit but only the purchaser at the rent-sale and that consequently the suit was not barred by limitation under s. 22 and art. 12, cl. (*b*) of the Limitation Act. In proceedings under the Civil Procedure Code to set aside a sale in execution of a decree, the decree-holder is a necessary party. ANNAMALAI *v.* MURUGAPPA (1914) . **I. L. R. 38 Mad. 837**

——— **s. 23**—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 192. **I. L. R. 38 Mad. 655**

——— **s. 28, Art. 47**—*Suit to recover possession of lands—Magistrate, order of, under Criminal Procedure Code (Act V of 1898), s. 145—Order passed without proper inquiry—Notice not legally served on the plaintiff—Plaintiff aware of proceedings—Order not without jurisdiction—Applicability of Art. 47—Tenant for a term—Landlord treating tenant as a trespasser after the expiry of the term—Subsequent registered notice to quit—Cause of action, when.* Art. 47 of the Limitation Act (IX of 1908) is applicable to a suit for recovery of possession of lands in respect of which an order had been passed by a Magistrate acting under s. 145 of the Code of Criminal Procedure, although the Magistrate might not have made the proper inquiries which he ought to have made before he passed the order, if the plaintiff had notice of the proceedings, though the notice was not served on the plaintiff in accordance with law. *Gangadaram Aiyar* v. *Sankarappa Naidu, 9 Mad. L. T. 91*, followed. Where the defendants were tenants for a term under the plaintiff and continued in possession of the lands after the expiry of the term but the plaintiff did not treat the defendants as tenants holding over but as trespassers after the date of the expiry of the term, and the magisterial order under s. 145 of the Code of Criminal

LIMITATION ACT (IX OF 1908)—*contd.*

——— **s. 28**—*concld.*

Procedure was passed in the defendant's favour subsequent to the said date. *Held*, that the suit for recovery of possession of the lands brought by plaintiff more than three years after the said order was barred under art. 47 of the Limitation Act. *Tukaram* v. *Hari, I. L. R. 28 Bom. 601, Bapu bin Mahadaji* v. *Mahadaji Vasudeo, I. L. R. 8 Bom. 348*, and *Wise* v. *Ameerunissa Khatom, L. R. 7 I. A. 73*, referred to. *Bolai Chand Ghosal* v. *Samiruddin Mandal, I. L. R. 19 Calc. 646*, distinguished. PARASURAMAYYA *v.* RAMACHANDRUDU (1913). **I. L. R. 38 Mad. 432**

——— **Sch. I, Arts. 12, 95, 166**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50.
I. L. R. 38 Mad. 1076

——— **Art. 14**—*Possession of land as owner for fifty years—User of land as graveyard and also as timber depôt—Order by Government for discontinuing the user as timber depôt—Order ultra vires—Land Revenue Code (Bom. Act V of 1879), ss. 65, 66.* The plaintiffs were in possession of the land in dispute as owners ever since 1860 and used a portion of it as a graveyard, and on another portion of it they built a shed which was used as a timber shop. In 1871, Government assessed the land and entered it in the Revenue Registers as "Government waste land." The plaintiffs paid no assessment on the land. In 1908, the District Deputy Collector passed an order directing the Mamlatdar to "cause the building and the wood to be removed forthwith from the said land." This order was finally confirmed by the Commissioner on the 24th April 1909. The plaintiffs filed the present suits on the 2nd February 1910, to obtain a declaration that they were absolute owners of the land, to have set aside the order of 1909, and to get a permanent injunction restraining Government from disturbing the plaintiffs in their possession of the land. The lower Court dismissed the suits holding that the plaintiffs were not absolute owners but occupants only, and that the suits were barred under Art. 14 of the first schedule to the Limitation Act, 1908. The plaintiffs having appealed: *Held*, that as the land in dispute was not used for the purpose of agriculture, neither s. 65 nor s. 66 of the Land Revenue Code (Bom. Act V of 1879) applied to the case, and the orders passed by the Revenue Authorities to evict the plaintiffs were *ultravires*. *Held*, further, that the suits were not barred by Art. 14 of the Limitation Act (IX of 1908), inasmuch as it was not necessary for the plaintiffs to have the order set aside. RASULKHAN HAMADKHAN *v.* SECRETARY OF STATE FOR INDIA (1915) . . . . **I. L. R. 39 Bom. 494**

——— **Arts. 29, 36, 49**—

See ARREST OF SHIP.
I. L. R. 42 Calc. 85

——— **Arts. 29, 62 and 120**—*Attachment of debt—Wrongful seizure of moveable property—Suit by claimant to the debt against the decree-holder—Article, applicable.* Neither attachment of a debt nor voluntary payment of it into Court, constitutes seizure of moveable property under legal process within the meaning of art. 29 of the Limitation Act. A suit by a claimant to the debt attached against the decree-holder to whom the amount of the debt was paid is governed by either art. 62 or 120. *Narasimha Rao* v. *Gangaraju, I. L. R. 31 Mad. 431*, distinguished. YELLAMMAL v. AYYAPPA NAICK (1914)
I. L. R. 38 Mad. 972

LIMITATION ACT (IX OF 1908)—*contd.*

——— **Sch. I**—*contd.*

——— **Art. 29**—*concld.*

——— **Art. 42**—

See INJUNCTION. **I. L. R. 42 Calc. 550**

——— **Art. 44 or 144**—

See HINDU LAW—GUARDIAN.
I. L. R. 38 Mad. 1125

——— **Arts. 48 and 49**—*Suit for goods misappropriated—Indian Contract Act (IX of 1872), ss. 108 and 178.* One *K* took a jewel of the plaintiff in May 1907, to find a purchaser for it, stating that he would settle the price in the presence of the plaintiff; but instead of doing so, *K* in June 1907 pledged it with the third defendant who *bonâ fide* lent, on its security Rs. 175. Plaintiff came to know of *K's* conversion in 1909 and sued in 1911 for the jewel or its value, the third defendant and the widow and son of *K* who died at the end of 1907. *Held*, that Art. 48 and not 49 of the Limitation Act (IX of 1908), was applicable and that the suit was not barred by limitation. *Held*, also that the *bonâ fides* of the third defendant does not preclude the plaintiff from recovering the jewel without paying the third defendant the amount of loan. Effect of ss. 108 and 178 of the Indian Contract Act, considered. SESHAPPIER *v.* SUBRAMANIA CHETTIAR (1914) . **I. L. R. 38 Mad. 783**

——— Art. 60—*Limitation—Suit to recover money deposited with banking firm.* There is no doubt, since the passing of the Indian Limitation Act, 1908, that a suit for the recovery of money deposited with a banker and repayable on demand is governed by Art. 60, and not by art. 59, of the first schedule to the Act. *Dharam Das* v. *Ganga Devi, I. L. R. 29 All. 773*, referred to. JUGGI LAL *v.* KISHAN LAL (1915)
I. L. R. 37 All. 292

——— **Art. 62**—

See BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862), S. 3.
I. L. R. 39 Bom. 358

1. ——— *Limitation—Debt due to all the heirs of a deceased recovered by some of them—Suit by remaining heir for recovery of her share.* Some of the heirs of a deceased Muhammadan brought a suit upon a mortgage in his favour impleading as a defendant the remaining heir. The plaintiffs obtained a decree, and in

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I—*contd.*

——— Art. 62—*contd.*

execution thereof brought the mortgaged property to sale on the 21st of May, 1906, and purchased it themselves for a sum slightly in excess of the amount of the decree and costs. The decree-holders auction purchasers paid in the excess and got possession. On the 1st of June, 1912, the remaining heir sued to recover her share in the mortgage money, or, in the alternative, a share in the property purchased. *Held*, that the plaintiff had no cause of action so far as the property was concerned, and that as to the money her suit was barred by art. 62 of the first schedule to the Indian Limitation Act, 1908. *Mahomed Wahib* v. *Mahomed Ameer, I. L. R. 32 Calc. 527*, followed. *Umardaraz Ali Khan* v. *Wilayat Ali Khan, I. L. R. 19 All. 169*, and *Mahomed Riasat Ali* v. *Hasin Banu, I. L. R. 21 Calc. 157*, referred to. AMINA BIBI *v.* NAJM-UN-NISSA (1915) **I. L. R. 37 All. 233**

2. ——— *Limitation—Suit for money had and received—Suit by heir to recover share of inheritance from person appointed to wind up estate.* Where, pending arbitration in respect of the distribution of the estate of a deceased person amongst his heirs, the estate was by their consent put in charge of a third party who was to realize the assets and pay the debts, it was *held* that a suit by one of the heirs to recover from such person her share by inheritance was a suit for "money had and received" and was governed by art. 62 of the first schedule to the Indian Limitation Act, 1908. MASIH-UD-DIN *v.* IMTIAZ-UN-NISSA BIBI (1914) . . **I. L. R. 37 All. 40**

3. ——— *Limitation—Succession certificate obtained by one of the heirs of a deceased person—Suit by remaining heir for recovery of her share.* A certain Mahomedan in the year 1903 obtained a succession certificate to realize debts due to his deceased uncle and realised some of those debts. In the year 1913, the widow of his brother, who had died subsequent to the death of his uncle, brought the present suit for her husband's share of the money realised. *Held*, that Art. 62 of the first schedule to the Indian Limitation Act, 1908, governed the suit, and as no money had been realised by the holder of the succession certificate within three years of the suit, it was barred by limitation. *Amina Bibi* v. *Najm-un-nissa Bibi, I. L. R. 37 All. 233, Parsotam Rao Tantia* v. *Radha Bai, I. L. R. 37 All. 318, Mashi-ud-din* v. *Imtiaz-un-nissa Bibi, I. L. R. 37 All. 40, Mahomed Wahib* v. *Mahomed Ameer, I. L. R. 32 Calc. 527*, followed. *Umardaraz Ali Khan* v. *Wilayat Ali Khan, I. L. R. 19 All. 169*, distinguished. ABDUL GHAFFAR *v.* NUR JAHAN BEGAM (1915) . . **I. L. R. 37 All. 434**

4. ——— *Suit for refund of consideration money where there is a total failure of consideration.* When there is total failure of consideration with regard to a lease, a claim to a refund of the consideration money is governed by Art. 62 of the First Schedule of the Limitation Act. BISWANATH GORAIN *v.* SURENDRO MOHAN GHOSE (1913) **19 C. W. N. 120**

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I—*contd.*

——— Art. 62—*concld.*

——— Arts. 62 and 97—*Sale of land by one having a voidable title and putting purchaser in possession thereunder—Dispossession by person entitled to avoid—Cause of action for return of purchase money, only on dispossession.* A who had a title to certain immoveable property voidable at the option of C sold it to B and put B in possession thereof. C then brought a suit against A and B, got a decree and obtained possession thereof in execution. *Held*, that B's cause of action for the return of the purchase money arose not on the date of the sale but on the date of his dispossesion when alone there was a failure of consideration and that the article applicable was Art. 97 of the Limitation Act. Cases on the subject reviewed. SUBBAROYA *v.* RAJAGOPALA (1914) . **I. L. R. 38 Mad. 887**

——— Arts. 62, 120—*Separate Hindu family—Property managed by one member—Receipt of money by that member—Suit for partition.* Three brothers who had been living with their father as a joint Hindu family obtained under the will of their father, in whose hands it was separate property, a considerable amount of movable and immovable property. The property bequeathed was divided by the will into three lots; but the legatees still continued to live as a joint Hindu family and the property of all was managed for a series of years by one member of the family acting as if he were the *karta* of a joint Hindu family. *Held*, on suit by the widow of one of the members of the family to recover from the manager her deceased husband's share of money received by the defendant as manager but owned by all the three members of the family in equal shares, that the suit was not a suit for "money had and received," but was one to which Art. 120 of the first schedule to the Indian Limitation Act applied. PARSOTAM RAO TANTIA *v.* RADHA BAI (1915) . **I. L. R. 37 All. 318**

——— Art. 89—*Death of principal—Agent continuing in service of heir—Old agency if subsists—Contract Act (IX of 1872), ss. 209, 253—Demand of accounts—Agent failing to comply, if refusal—Agent not responding to demand for explanation of account papers submitted, if refusal—Obligation to explain papers.* The death of the principal terminates the agency. Where on the death of the principal, the agent continued in the service of his successors in interest. *Held*—That a new agency not governed by the original contract was created. Where, under such new arrangement, parties agreed that account should be submitted from year to year, a suit against the agent would not be governed by Art. 115 but by Art. 89 of Sch. I of the Limitation Act. *Easin* v. *Baroda Kishore, 11 C. L. J. 43*, not followed.

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I—*contd.*

——— Art. 89—*concld.*

Shib Chandra Ray v. *Chandra Narain Mukerjee, I. L. R. 32 Calc. 719* : *s. c. 1 C. L. J. 232*, and *Asghar Ali Khan* v. *Khurshed Ali Khan, I. L. R. 24 All. 27*, relied on. If there has been a demand for accounts and the agent has not responded to the call, there is, by implication, a refusal within the meaning of Art. 89. This is the case also where the agent has submitted accounts but has failed to respond to the principal's demand to explain them. *Chandra Madhab Barua* v. *Nabin Chandra Barua, I. L. R. 40 Calc. 103*, not followed. MADHUSUDAN SEN *v.* RAKHAL CHANDRA DAS BASAK (1915) . . . **19 C. W. N. 1070**

——— Arts. 91, 120—*Suit to set aside a mortgage—Mortgage deed executed without consideration and not intended to be operative—Cause of action.* A suit to set aside a mortgage-deed was brought nine years after its execution on the ground that the defendant only recently threatened to bring a suit on the basis of it, though when it was executed it was never intended to be acted upon, no consideration having passed for it. *Held*, that the suit was barred by limitation, no matter whether Art. 91 or Art. 120 of the first schedule to the Limitation Act applied to the suit, the fact entitling the plaintiff to have the document set aside having been known to him from the very outset. *Singarappa* v. *Talari Sanjivappa, I. L. R. 28 Mad. 349*, and *Vithai* v. *Hari, I. L. R. 25 Bom. 78*, referred to. QASIM BEG *v.* MUHAMMAD ZIA BEG (1915) . . **I. L. R. 37 All. 640**

——— Art 116—

See SALE-DEED. **I. L. R. 38 Mad. 1171**

——— Art. 120—*Pre-emption, right of—Knowledge of sale when essential for the article to apply.* In a suit by an ottidar to enforce his right of pre-emption, the right to sue cannot be said to arise unless the plaintiff has the necessary knowledge of the sale. Such a right can only be exercised when the ottidar knows first of all that the property is sold or attempted to be sold to another person and what the terms on which it is proposed to be sold. Without such knowledge he is not in a position to elect. *Ramasami Pattar* v. *Chinnan Asari, I. L. R. 24 Mad. 449*, and *Kurri Veerareddi* v. *Kurri Bapireddi, I. L R 29 Mad. 336*, distinguished. *Cheria Krishnan* v. *Vishnu, I. L. R. 5 Mad. 198*, *Vasudevan* v. *Keshavan, I. L. R 7 Mad. 309*, and *Ammotti Haji* v. *Kunhayan Kutti, I. L. R. 15 Mad. 480*, commented on. MAMMALI *v.* KUNHIPAKKI HAJI (1912).

I. L. R. 38 Mad. 67

——— Arts. 120, 125—*Hindu law—Hindu widow—Suit for declaration that alienation by widow enures only for her life—Reversioners—Right of suit. Held*, that, although the existence of nearer reversioners may be a bar to a more remote reversioner suing for a declaration that an alienation made by a Hindu widow does not enure for a longer period than the life-time of the widow, yet he is not entitled to wait until limitation has expired in respect of all the nearer reversioners for such a suit is, under Art. 125 of the first schedule to the Indian Limitation Act, 1908, twelve years from the date of the alienation for nearer and more remote reversioners alike. KUNWAR BAHADUR *v.* BINDRABAN (1914).

I. L. R. 37 All. 195

——— Art. 124—

See LIMITATION—SHEBAIT.

I. L. R. 42 Calc. 244

——— Art. 131—*Suit to recover sums due under periodically recurring right, governed by.* Art. 131 of sch. II of the Limitation Act (IX of 1908) applies to suits to recover sums due under a periodically recurring right whether there is a prayer for a declaration of plaintiff's right or not. *Held*, therefore, that a suit to recover arrears of "adima" allowance for a period of eight years was not barred as to any portion of it. ZAMORIN OF CALICUT *v.* ACHUTHA MENON (1914).

I. L. R. 38 Mad. 916

——— Art. 132—

1. ——— *Limitation—Suit to enforce payment of money charged upon immoveable property—Instalment bond—Meaning of "becomes due."* A mortgage deed executed on the 16th July, 1890, provided that the mortgagors pay the principal amount secured in ten years by instalments of Rs. 625 yearly and that interest should be paid monthly. There was this further clause :—"If we fail to pay the interest aforesaid in any month, on the principal by the stipulated period, as specified above, or no payment is made in a year, the mortgagee shall under all those circumstances be at liberty to realise the entire amount with the interest aforesaid in a lump sum through the court by means of a suit from the mortgaged and other moveable and immoveable property and the person of us the executants." There was also this further provision :—"If the mortgagee in order to get interest, does not bring a suit in default of any instalment and we are unable to pay the money, the interest should continue up to the stipulated period of ten years and after it up to the date of realization." No payment was ever made of either principal or interest and the mortgagees ultimately brought a suit on the mortgage on the 12th June, 1912. *Held* by RICHARDS, *C. J.*, and TUDBALL, *J.* (BANERJI, *J. dissenting*), that the suit was barred under art. 132 of sch. I to the Indian Limitation Act, 1908, the mortgage money having become due when the first default was made. *Vasudeva Mudaliar* v. *Srinivasa Pillai, I. L. R. 30 Mad. 426, Reeves* v. *Butcher, 2 Q. B. D. 509, Sitab Chand Nahar* v. *Haidar Malla, I. L. R. 24 Calc. 281*, and *Perumal Ayyan* v. *Alagirisami Bhagavathar, I. L. R. 20 Mad. 245*, referred to. *Nettakaruppa Goundan* v. *Kumara Sami Goundan, I. L. R. 22 Mad. 20, Maharaja of Benares* v. *Nand Ram, I. L.*

LIMITATION ACT (IX OF 1908)—*contd.*

Sch. I—*contd.*

Art. 132—*concld.*

R. 29 All. 431, Shanker Prasad v. *Jalpa Prasad, I. L. R. 16 All. 371, Ajudhia* v. *Kunjal, I. L. R. 30 All. 123,* and *Jineswar Das* v. *Mahabeer Singh, I. L. R. 1 Calc. 163,* distinguished. *Per* BANERJI, *J.* Having regard to the second of the provisions above cited the suit was not barred by limitation. Where a creditor is authorized to wait for the full period stipulated for repayment, the money does not become due, within the meaning of art. 132 of the first schedule to the Indian Limitation Act, 1908, until that period expires. GAYA DIN *v.* JHUMMAN LAL (1915) . **I. L. R. 37 All. 400**

2. ——— *Accounts, suit for, against agent—Stipulation to render accounts yearly—Limitation.* A suit by the principal against his agent for recovery of sums to be found due upon adjustment of accounts by sale of immoveable properties hypothecated by the agent is a suit to enforce a charge on immoveable property within the meaning of Art. 132 of the Indian Limitation Act. *Hafizuddin Mandal* v. *Jadu Nath Saha, I. L. R. 35 Calc. 298,* followed. *Jogesh Chandra* v. *Benode Lal Roy, 14 C. W. N. 122,* not followed. MADHUSUDAN SEN *v.* RAKHAL CHANDRA DAS (1915) **19 C. W. N. 1070**

Art. 134—

1. ——— *Mortgage—Sale by mortgage—Suit for redemption by mortgagor against mortgagee and vendees—Plea of purchase for consideration—Omission of the words "in good faith" in Art. 134.* The omission of the words "in good faith" from the Art. 134 of the first schedule to the Limitation Act of 1908 does not entitle a person who purchases with full knowledge that his vendor's title is merely that of mortgagee to the benefit of article. DRIGPAL SINGH *v.* KALLU (1915) . . . **I. L. R. 37 All. 660**

2. ——— *Putni lease granted by shebait, if "transfer for valuable consideration" —Non-payment of premium for creation of lease if alters nature of transfer—Suit by shebait for recovery of possession—Limitation—S. 30, when applies.* The grant of a *putni* lease of a property belonging to an idol by the *shebait* is a transfer for valuable consideration within the meaning of Art. 134, Sch. I, of the Limitation Act, whether or not any premium was paid for the creation of the lease and a suit brought more than 12 years after the date of the lease by the then *shebait* to recover possession of the property is barred under Art. 134. S. 30 of the Limitation Act only applies when there is a period of limitation prescribed both by the Act of 1877 and the Act of 1908. RAMESHAR MALIA *v.* RAM CHANDRA ACHARYA GOSWAMI (1915) . **19 C. W. N. 1082**

Art. 141—*Dispossession in life-time of full owner—Adverse possession against limited owner before Limitation Act of 1871, effect of—Thak and survey maps, as evidence of title and possession.* Art. 141 only applies to cases where it is proved that the last full owner was in possession at the time of his death. If he himself was dispossessed and time began to run against him, the fact that on his death he was succeeded by his widow, daughter or mother would not arrest the operation of the law of limitation. Under the law as it stood before the Limitation Act of 1871 came into operation, adverse possession which extinguished the title of the female heir also extinguished the title of the reversioner and once the title was extinguished while the Limitation Act of 1859 or Reg. III of 1793 or Reg. II of 1805, was in force, it could not be revived by the introduction of the Limitation Act of 1871. MOHENDRA NATH BISWAS *v.* SHAMSUNNISSA KHATUM (1914) . . . . **19 C. W. N. 1280**

Art. 142—

See HINDU LAW—JOINT FAMILY.
I. L. R. 38 Mad. 684

Arts. 142, 144—*Suit for possession—De facto possession with defendant—Burden of proof.* Where the plaintiff alleges possession of land, and it is found that part of the land is *de facto* in possession of the defendant, the case falls under Art. 142, and not Art. 144, of Sch. II to the Indian Limitation Act (IX of 1908). Every suit for possession of immoveable property in which the plaintiff alleges that he has had possession must fall under Art. 142. It is only where the plaintiff does not allege that he has ever been in possession that the case will fall under Art. 144. In the former class of cases the plaintiff is bound to show that the dispossession or discontinuance of possession which gives rise to the starting point of limitation was within twelve years of the date of the suit. SUBAPPA *v.* VENKAPPA (1914)
I. L. R. 39 Bom. 335

Art. 164—*Application to set aside an ex parte decree passed when Act No. XV of 1877 was in force—Limitation.* The plaintiff obtained an *ex parte* decree on the 29th of November 1904, which was made absolute on the 24th of August, 1907. The proclamation of sale was brought to the village on the 19th of December, 1912. The defendant on the 9th of January, 1913, applied to have the *ex parte* decree set aside. The plaintiff contended that the defendant had knowledge of the decree prior to 1910, and, therefore, her application was barred by Article 164 of the Indian Limitation Act of 1908. The defendant contended that Art. 164 of the Limitation Act of 1877, applied to her case. *Held,* that the defendant's application was barred by Art. 164 of Act IX of 1908. *Hope Mills, Limited* v. *Vithaldas Pranjivandas, 12 Bom. L. R. 730,* referred to. JIA BIBI *v.* ILAHI BAKHSH (1915)
I. L. R. 37 All. 597

Arts. 164 and 181—*Ex parte decree, setting aside of—Defendant dead after decree—Executor not brought on the record—Executor, application by, to set aside ex parte decree—Application made more*

LIMITATION ACT (IX OF 1908)—*contd.*

——— **Sch. I**—*contd.*

——— **Art. 164**—*concld.*

than thirty days after decree—Civil Procedure Code (V of 1908), s. 146. Where a decree was passed *ex parte* against a defendant who died seven days after the decree, and an application to set it aside was made by the executor of the deceased defendant more than thirty days after the passing of the decree. *Held*, that Art. 164 and not Art. 181 of the Limitation Act (IX of 1908) applied to the case and that the application was barred. On the true construction of Art. 164 of the Limitation Act read with s. 146 of the Code of Civil Procedure (Act V of 1908), the word "defendant" in the said Art. 164 is wide enough to indicate the executor of the original defendant, though the executor may not have been brought on the record when the application was made. *Ganoda Prosad Roy v. Shib Narain Mukerjee, I. L. R. 29 Calc. 33*, referred to. VENKATASUBBAYYER *v.* KRISHNAMURTHY (1913) . **I. L. R. 38 Mad. 442**

——— **Arts. 180, 182—**

See LIMITATION. **I. L. R. 42 Calc. 776**

——— **Art. 181—**

See LIMITATION . **I. L. R. 42 Calc. 294**

——— **Art. 182—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 48. **I. L. R. 39 Bom. 256**

See EXECUTION OF DECREE. **I. L. R. 37 All. 527**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179. **I. L. R. 39 Bom. 20**

——— **Art. 182** *(2)—Mortgage suit decreed against some defendants and dismissed against others who were allowed costs against plaintiff—Appeal by the defendants against whom suit decreed, effect of, on application by the other defendants for execution of decree for costs against plaintiff.* The appellant was the plaintiff in a mortgage suit and obtained a decree except against two of the defendants whose property was exempted from liability and whose costs the plaintiff was directed to pay. The defendants against whom the suit was decreed appealed. The two other defendants applied for execution of their decree, for costs against the appellant. The lower Court held that limitation ran from the date of the decision of the appeal preferred by the defendants against whom the suit had been decreed: *Held*, that in dealing with the question of limitation in these cases, the Court should see whether the original decree was really one decree or an incorporation of several decrees and whether the appeal against it imperilled the whole decree or not, for the execution of which the application is made. That the order dismissing the plaintiff's suit with costs as against two of the defendants and the order decreeing it with costs as against the other defendants were not one and the same decree, because they were embodied in one formal order. There was no appeal against the decree by which the plaintiff was directed to pay costs to two of the defendants and the fact that there was an appeal against an entirely different decree which was recorded in the same document did not affect the question of limitation when no order that could have been passed in that appeal could possibly have affected the decree sought to be executed. LAW *v.* BENARASHI PROSHAD CHOWDHURY (1914) . **19 C. W. N. 287**

LIMITATION ACT (IX OF 1908)—*concld.*

——— **Sch. I**—*concld.*

——— **Art. 182**—*concld.*

——— ——— **Art. 183**—*Revivor of decree of Original Side of the High Court—Revival of decree on notice to one only of two judgment-debtors, not operating as revival against the other.* A revivor of a decree of the Original Side of the High Court made on an application for execution against one only of two judgment-debtors in the case does not keep the decree alive so as to enable the decree-holder to execute it against the other judgment-debtor after twelve years from the date of the decree. MC LAREN *v.* VEERIAH NAIDU (1915) **I. L. R. 38 Mad. 1102**

LIMITATION AMENDMENT ACT (XI OF 1900).

See MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884), S. 168. **I. L. R. 38 Mad. 456**

See MUNICIPAL COUNCIL. **I. L. R. 38 Mad. 6**

LIMITED COMPANY.

See PATNI LEASE. **I. L. R. 42 Calc. 1029**

LIQUIDATED DAMAGES.

See INTEREST. . **I. L. R. 42 Calc. 652**

LIS PENDENS.

See ASSIGNEE OF A MONEY-DECREE. **I. L. R. 38 Mad. 36**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 63. **I. L. R. 38 Mad. 535**

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52. . **I. L. R. 38 Mad. 450**

——— *Civil Procedure Code (Act XIV of 1882), ss. 248, 311, 313—Non-service of notice, if an irregularity—Sale of putni mahal for arrears of rent —Purchase of putni mahal by executor of deceased dar-putnidar's estate in his personal capacity—Application under s. 311 for setting aside sale by executor as such and under s. 313 by purchaser in personal capacity.* D, the zamindar of a *putni mahal*, sold his interest in the property and then brought a suit against C, the *putnidar* for the arrears of the *putni* rent that had accrued prior to the sale and obtained a decree. Shortly afterwards D died after having assigned all his properties including this decree to certain trustees for the payment of his debts. The *putni* was then put to sale under Reg. VIII

LIS PENDENS—*concld.*

of 1819 for non-payment of rent and F who was the executor to the estate of his deceased father who was *dar-putnidar* under C deposited the arrears for saving the *dar-putni* interest from the effect of the sale and obtained possession as mortgagee. The *putnidari* interest in the *putni* was then sold in execution of a money decree and purchased by S. The trustees appointed by D took out execution and the *putni* was fixed for sale. F instituted a regular suit for a declaration that the decree under execution was not a rent-decree and for a perpetual injunction upon the decree-holders not to execute the same against the *putni mahal*. The suit was decreed by the first Court but dismissed by the High Court on the 8th April 1908. F applied for leave to appeal to the Privy Council which was granted on the 30th June 1908. The trustees applied for the sale of the *putni mahal* and they impleaded C alone as judgment-debtor. The sale took place on the 6th July 1908 and the property was purchased by F in his personal capacity. For setting aside the sale, an application under s. 311, Civil Procedure Code, was made by S as also by F as executor to the estate of his deceased father. F also made an application in his personal capacity under s. 313, Civil Procedure Code. The District Judge allowed these applications and set aside the sale. The judgment of the Privy Council was subsequently delivered on the 4th March 1914 and it was held that the suit instituted by F should have been decreed. *Held*, that the facts were sufficient to attract the application of the doctrine of *lis pendens* and the act of the decree-holders in bringing about the sale could not prejudice F and make the judgment of the Privy Council nugatory. *Shivlal* v. *Shambhu*, *I. L. R. 29 Bom. 435*, distinguished. That, although C, the former *putnidar*, had no subsisting interest in the property, the decree-holders having chosen to treat him alone as the judgment-debtor were bound to serve him with notice of the sale, though they were not bound to issue notice on S, the purchaser of the *putni* interest, whose suit failed, whom they were not willing to treat as the legal representative of C and against whom they did not want to execute the decree. That non-service of notice under s. 248, Civil Procedure Code, was not a mere irregularity and vitiated the sale. *Raghunath Das* v. *Sunder Das*, *18 C. W. N. 1058*, followed. That the auction purchase of the *putni* was made by F in his personal capacity and he was not debarred from applying under s. 313, Civil Procedure Code, for setting aside the sale. MOHARAJ BAHADUR SINGH *v.* SURENDRA NARAIN SINGH (1914) . . **19 C. W. N. 152**

LOCAL CUSTOM.

See RAILWAY RECEIPT.
I. L. R. 38 Mad. 664

LOCAL GOVERNMENT.

——— **delegation of powers to—**

See PENAL CODE (ACT XLV OF 1860), SS. 188 AND 269.
I. L. R. 38 Mad. 602

LOCAL GOVERNMENT RULES.

See PENAL CODE (ACT XLV OF 1860), SS. 188 AND 269. **I. L. R. 38 Mad. 602**

LUNACY ACT (XXXV OF 1858).

——— *Scope of enquiry under —Pardanishin lady, document executed by, under circumstances rendering it inoperative—Suit relating to lunatic's property how to be brought.* The Lunacy Act contemplates only the question of lunacy or sanity at the time of the enquiry; there is no provision in it that the enquiry shall extend to the ascertainment of the period at which the alleged lunatic first became of unsound mind and the finding of the District Judge in the lunacy proceedings did not carry things back further than the enquiry which commenced in November 1906, and notwithstanding the result of that enquiry, the burden still rested on the plaintiffs of showing that N was of unsound mind on the 16th September 1906—the date of the execution of the lease. That N being of unsound mind at the time of the execution of the lease, it created no title in the defendant which barred the plaintiffs' right to possession. That even if lunacy at the date of the execution of the lease was not established, the transaction could not stand, as it did not appear that the lease was explained to N, a *pardanishin* lady of weak intellect, and was understood by her. *Held* (as to the contention that apart from lunacy the transaction would be voidable and not void and could not be avoided by any one but N and in a suit to which her manager was a party), that the Receivers were competent plaintiffs even if the lease was not void but voidable. That even if a lunatic's manager can sue, still there is no established rule of practice in the Calcutta High Court that requires suits relating to the lunatic's property to be brought by him and not by the lunatic. On the contrary the Code of Civil Procedure contemplates suits by persons of unsound mind whether so adjudged or not. It is true that a person so incapacitated has to sue by a next friend; but a next friend is not a party and the absence of a next friend in the present suit was immaterial. That, in any case, as the objection did not affect the merits of the decision of the lower Court, under s. 99 Civil Procedure Code, it was not a ground for reversal of that decision. CASSIM MAMOOJI *v.* K. B. DUTT (1914). . . . . **19 C. W. N. 45**

LURKING HOUSE TRESPASS.

See PENAL CODE (ACT XLV OF 1860), S. 456. . . **I. L. R. 37 All. 395**

M

MADRAS ACTS.

——— **1864—II.**

See MADRAS REVENUE RECOVERY ACT.

——— **1865—VII.**

See MADRAS IRRIGATION CESS ACT.

MADRAS ACTS—*concld.*

——— **1865—VIII.**

See MADRAS RENT RECOVERY ACT.

——— **1873—III.**

See MADRAS CIVIL COURTS ACT.

——— **1876—I.**

See MADRAS ASSESSMENT ACT.

——— **1882—V.**

See MADRAS FOREST ACT.

——— **1884—IV.**

See MADRAS DISTRICT MUNICIPALITIES ACT.

——— **1884—V.**

See MADRAS LOCAL BOARDS ACT.

——— **1895—III.**

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

——— **1900—I.**

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.

——— **1904—III**

See MADRAS CITY MUNICIPAL ACT.

——— **1905—III.**

See MADRAS LAND ENCROACHMENT ACT.

——— **1908—I.**

See MADRAS ESTATES LAND ACT.

MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876).

——— **s. 2**—"*Owner*" *under, meaning of—Permanent lessee, not an owner—Non-liability to separate registration and assessment—Proprietor or owner under Regulation (XXV of 1802)—Madras Hereditary Village Offices (Act III of 1895).* Grantees, holding under perpetual grants subject to payment to the zamindar (the grantor) of a small rent under the name of jodi, kattubadi or poruppu, are not liable to have their lands separately registered and to have separate assessment imposed upon them, under the provisions of the Madras Act I of 1876. A permanent lessee is not included in the term "owner" as used in section 2 of the Madras Assessment of Land Revenue Act (I of 1876). A permanent lessee is not a proprietor or owner under Regulation XXV of 1802 or the Madras Hereditary Village Offices Act (III of 1895). *Venkateswara Yettiappah Naicker* v. *Alagoo Moottoo Servagaren, 8 Moo. I.A. 327, Hari Narayan Singh* v. *Sriram Chakravarti*, L. R 37 I. A. 136, *Durga Prasad Singh* v. *Brojo Nath Bose*, L. R. 39 I.A. 133, and *Kshetrabaro Bissoyi* v. *Sobhanapuram Hari Krishna Nayudu*, I.L.R. 33. Mad. 341, followed. *Robert Fischer* v. *The Secretary of State for India*, I.L.R. 22 *Mad. 270*, distinguished. *Komalammal* v. *Raju Naicker, I. L. R. 19 Mad. 308*, distinguished. MAHARAJA OF VIZIANAGRAM v. THE COLLECTOR OF VIZAGAPATAM (1914).

I. L. R. 38 Mad. 1128

MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876)—*concld.*

——— **s. 2**—*concld.*

22 Mad. 270, distinguished. *Komalammal* v. *Raju Naicker, I. L. R. 19 Mad. 308*, distinguished. MAHARAJA OF VIZIANAGRAM v. THE COLLECTOR OF VIZAGAPATAM (1914).

I. L. R. 38 Mad. 1128

MADRAS CITY MUNICIPAL ACT (III OF 1904).

1. ——— "*Final*", *meaning of, in section 287 (3)—Standing Committee, whether special tribunal, or independent body—New additions to building—Whether mandamus or injunction appropriate remedy to remove them.* The plaintiff, as the owner of house and premises No. 36 in Singana Chetty Street in the City of Madras, obtained permission from the Municipality of Madras City to execute certain repairs therein. The President being of opinion that under cover of the permission granted, she had made considerable additions and alterations, made a provisional order under s. 287, clause (*1*) of the Madras City Municipal Act (III of 1904), directing their removal and subsequently confirmed that order under clause (*2*) of section 287. Any appeal by the plaintiff to the Standing Committee having proved ineffectual, she filed a suit in the City Civil Court for the issue of a perpetual injuction restraining the Corporation from demolishing the alleged additions. *Held*, that when a right and an infringement thereof are alleged, a cause of action is disclosed, and unless there is a bar to the entertainment of a suit, the ordinary Civil Courts are bound to entertain the claim ; and that a suit for injunction will therefore lie. *Held*, further, that the Standing Committee cannot be held to be an independent body or a special tribunal authorised to settle finally disputes as between the taxpayers or house-owners and the Corporation of which they are the members. Instance of "Special tribunal," pointed out. *Bhai Shankar* v. *The Municipal Corporation of Bombay, I. L. R.* 31 Bom. *604*, referred to. *Held*, also, that the word "final" in s. 287 refers to proceedings before the Corporation and is intended to bar an appeal from the Standing Committee to the general body of Commissioners, but not to shut out the jurisdiction of the courts. The suit was properly brought against the President as he was acting on behalf of the Corporation. *Bholaram Chowdhry* v. *Corporation of Calcutta, I. L. R. 36 Calc. 671*, distinguished. VALLI AMMAL v. THE CORPORATION OF MADRAS (1912) . **I. L. R. 38 Mad. 41**

2. ——— *Presidency Magistrate holding an inquiry under rules framed under, not a Court under Charter Act (24 & 25 Vict., c. 104), s. 15—Jurisdiction—The Indian High Courts Act (24 & 25 Vict., c. 104)*, s. 15. The High Court has no jurisdiction to revise an order passed by a Presidency Magistrate in an inquiry held by virtue of the rules framed by Government under the Madras City Municipal Act (III of 1904), whereby a Magistrate may de-

MADRAS CITY MUNICIPAL ACT (III OF 1904)—*concld.*

cide as to the competency or otherwise of a candidate for a Municipal election. The Magistrate is not a Court subject to the appellate jurisdiction of the High Court within the meaning of that word in s. 15 of the Charter Act (24 & 25 Vict. c. 104). He is in the position of a referee between the President of the Municipal Corporation and the candidate. VIJIARAGHAVULU PILLAI v. THEAGORAYA CHETTI (1914).

I. L. R. 38 Mad. 581

MADRAS CIVIL COURTS ACT (III OF 1873).

——— **s. 14—**

See JURISDICTION.

I. L. R. 38 Mad. 795

——— **s. 16—**

See MAPPILLAS OF NORTH MALABAR.

I. L. R. 38 Mad. 1052

——— **s. 17**—*Original suit tried partly by a District Munsif—Subsequent appointment as Subordinate Judge—Decree passed by successor in the Munsif's Court—Appeal from the decree—Competency of the Subordinate Judge to hear the appeal—Disqualification under the common law and statutory law, nature of—Objection when to be taken—Waiver—Mere bias or prejudice, ground of disqualification, when—Appropriate remedy.* Where a District Munsif tried an original suit in part and was promoted to be a Subordinate Judge and his successor in office as a District Munsif completed the trial of the suit and passed a decree therein, and an appeal preferred against the decree was heard and disposed of without objection, by the Subordinate Judge who had tried the original suit in part: *Held*, that the disposal of the appeal by the Subordinate Judge was not legally invalid and ought not to be set aside by the Appellate Court. S. 17 of the Madras Civil Courts Act introduces a statutory disqualification as regards District and Subordinate Judges but is confined to the case where the appeal to be heard in the Appellate Court is against the decree or order passed by the District or Subordinate Judge himself in another capacity. S. 17 of the Madras Civil Courts Act does not make any distinction between the Judge being a nominal party or a really interested party. The interest which disqualifies a Judge must be pecuniary interest or one which involves some individual right or privilege or it must be an interest arising out of the near relationship of the Judge to a party to the cause. Mere bias or prejudice on the part of a Judge does not disqualify him in the absence of a statutory provision. Even as regards relationship to a party to the cause, a Judge was not under the common law disqualified by such relationship and it is only by statute law such a disqualification could be imposed on a Judge. Under the common law, there is no disqualification imposed on a Judge to sit in his own Court in review of his own decision (it is so under the statute law also) or even to review it on appeal in the

MADRAS CIVIL COURTS ACT (III OF 1873).—*concld.*

——— **s. 17**—*concld.*

Appellate Court, if he become an Appellate Judge having appellate jurisdiction over the tribunal in which he decided the cause as Original Judge. Where there is no statutory or common law disqualification in the Judge of the Court below, an Appellate Court should not set aside the judgment of the Lower Court on the mere ground that it might have been swayed by bias or prejudice. Even in such a case unless objection was taken before the Judge of the Lower Court itself at or during the trial of the cause to his hearing the suit or appeal, the Appellate Court should not interfere except in a strong or clear case of failure of justice in the Lower Court through bias or prejudice. The appropriate remedy in such cases was for the party to have applied to the proper superior Court to have the case transferred to another Court. VENKATAPATHI NAYANIVARU v. MAHOMED SAHIB (1913). **I. L. R. 38 Mad. 531**

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884).

See MUNICIPAL COUNCIL.

I. L. R. 38 Mad. 6

——— **ss. 53 and 60**—*'Holds office' meaning of.* *M*, a District and Sessions Judge, whose usual place of business was within the Municipality of *C*, resided for sixty days within the Municipality of *K*, during the annual recess and during that period did some administrative but no judicial work. *Held*, (*a*) that *M* '*held his office*' during that period, within the Municipality of *K*, within the meaning of s. 53 of the District Municipalities Act (IV of 1884); and (*b*) that a payment by him of profession tax for the half-year covering the sixty days to the Municipality of *K* was a lawful payment which would exempt him under s. 60 of the Act from liability to pay the tax again for the same half year to the Municipality of *C*. *Chairman, Ongole Municipality* v. *Mounsey, I. L. R. 17 Mad. 453*, distinguished. MOBERLY v. THE MUNICIPAL COUNCIL OF CUDDALORE (1914).

I. L. R. 38 Mad. 879

——— **s. 103—**

See MORTGAGE. **I. L. R. 38 Mad. 18**

——— **s. 168**—*Adverse possession against Municipality— 'Lawful encroachment', meaning of—Right of Municipality to remove encroachments, etc., after title barred—Limitation Act (XV of 1877)—Limitation Amendment Act (XI of 1900).* Adverse possession by a person for twelve years before the Limitation Amendment Act of 1900 came into force, of some portion of a street vested in a Municipality is sufficient to give the person a clear title as against the Municipality. Under s. 168 of the District Municipalities Act the Municipal Council is not entitled to remove the projections and encroachments made by a person who has acquired full title to them and to the site on which the encroachments stand by adverse

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*concld.*

——— **s. 168**—*concld.*

possession for the statutory period. *Basaveswara Swami* v. *Bellary Municipal Council, I. L. R. 38 Mad. 6*; s. c. *23 Mad. L. J. 478*, distinguished. CHAIRMAN, MUNICIPAL COUNCIL, SRIRANGAM, v. SUBBA PANDITHAR (1913).

I. L. R. 38 Mad. 456

MADRAS ESTATES LAND ACT (I OF 1908).

——— *Inamdar and ryot—Suit for rent in a Revenue Court—Revenue Court jurisdiction of—Landholder under s. 3, clause (5)—Estate—S. 3. clauses (2) (d) and (e)—S. 189 and schedule A, No. 8—"Landholders" wider than "owner of an estate."* An inamdar of a portion of a village, where the inam consists only of some of the lands in a village granted by a Zamindar after the permanent settlement, is a landholder under s. 3, clause (5) of the Madras Estates Land Act, though the inam may not be an estate under s. 3, clauses (2) (*d*) and (*e*) of the said Act. A suit brought by such an inamdar for arrears of rent against a ryot is cognisable by a Revenue Court under the said Act. The test which is decisive on the question of jurisdiction is whether the plaintiffs are landholders under the Act. The term "landholder" is wider than the expression "the owner of an estate," and includes every person entitled to collect the rents of any portion of an estate by virtue of any transfer. APPALANARASIMHULU v. SANYASI (1912)

I. L. R. 38 Mad. 33

——— **s. 3**—*'Ryoti land'—'Ryot' Rent—Pasture land not ryoti land—Rent for pasturing, not 'rent' under the Act—Ss. 189 and 77 of the Act—Suit for ejectment and recovery of pasture rent, cognisable, only by Civil Courts.* Land usually fit only for pasturing cattle and not for cultivation, *i.e.*, ploughing and raising agricultural crops is not 'ryoti' land, though it may have been 'old waste' and a tenant of such land is not a 'ryot' and any amount agreed to be paid for pasturing cattle is not 'rent' within the definitions of s. 3 of the Madras Estates Land Act (I of 1908): hence a suit to eject such a tenant from the land or to recover the amount due for pasturage is cognisable only by a Civil Court and not by a Revenue Court, as the jurisdiction of Civil Courts exists in all cases where it has not been expressly taken away. RAJA OF VENKATAGIRI v. AYYAPAREDDI (1913).

I. L. R. 38 Mad. 738

——— **s. 3, cl. (2) (c), (d) and 5**—*Landholder—Grantee of a portion of melvaram in an estate, a landholder—Cultivating tenant under the grantee, a ryot.* An alienee of a part of the melvaram due from the lands which form a part of an estate's ryoti lands is a "landholder" within the meaning of s. 3, clause 5 of the Madras Estates Land Act (I of 1908), though what he thus owns may not be an "estate" under the Act; and the tenant holding ryoti land under him for purposes of agriculture is a ryot under the Act; hence a

MADRAS ESTATES LAND ACT (I OF 1908)—*contd.*

——— **s. 3**—*contd.*

suit to eject such a tenant can be brought only in a Revenue Court and Civil Courts have no jurisdiction. *Brundavanachandra Horischandra Raja* v. *Ramayya, 26 Mad. L. J. 600*, followed. VENKANNA v. SRI RAJA RAMA ROW (1914).

I. L. R. 38 Mad. 1155

——— **s. 3, cl. (2) (d); s. 8, excep.**—*Grant of village as inam—Village composed of cultivated lands and waste lands—Grant of melvaram—Tenant of waste lands, without occupancy right—Village, an estate—Surrender by tenant—No acquisition of kudivaram by inamdar—Suit in ejectment—Jurisdiction of Civil Courts.* A village, granted as an inam in A. D. 1748, was comprised at the time of the grant partly of lands under cultivation and partly of waste lands. The waste lands were subsequently given by the inamdar for cultivation from time to time to different sets of tenants without occupancy right. The inamdar brought the present suit in the Civil Court to eject the tenant whose period of tenancy had expired prior to the suit. The defendant contended that the Civil Court had no jurisdiction to entertain the suit. *Held*, that the village as a whole must be considered to be an 'estate' within the definition of s. 3, clause (2) (*d*) of the Estates Land Act. Surrender by a tenant is not one of the modes in which the kudivaram right can be acquired by an inamdar within the terms of the exception to s. 8 of the Estates Land Act. An inamdar cannot acquire the kudivaram right by surrender from a tenant, who had himself no occupancy right in the holding. *Held*, consequently, that the Civil Court had no jurisdiction to entertain the suit. VENKATA SASTRULU v. SITARAMUDU (1914).

I. L. R. 38 Mad. 891

——— **ss. 3 (7), 6, 23, 153 and 157**—*'Old waste,' ejectment from—Onus of proving 'old waste' on landlord.* A landholder claiming to eject a tenant under S. 153 and 157 of Madras Estates Land Act (I of 1908) on the ground that he is a non-occupancy ryot of 'old waste' is by s. 23 of the Act bound to prove that the land is 'old waste' within the meaning of s. 3, clause (7) of the Act. If neither sub-clause (*1*) nor the latter part of sub-clause (2) of the definition of 'old waste' would apply to the facts of the case, the first part of sub-clause (2) cannot be used to prove that the land is 'old waste' as that refers to a state of facts subsequent to the passing of the Act, and as s. 6 of the Act vested in the tenant in possession occupancy right from the date of the passing of the Act in all ryoti lands not being 'old waste.' SARAVARAYUDU v. VENKATARAJU (1913).

I. L. R. 38 Mad. 459

——— **ss. 3 (7), 153 and 157**—*Proviso to s. 153, effect of—'Old waste,' tenant of—Ejectment from, grounds of.* The combined effect of s. 153 of the Madras Estates Land Act (I of 1908) even as added to by s. 8 of Madras Act IV of 1909, and of s. 157 of the Estates Land Act is that a ryot of

MADRAS ESTATES LAND ACT (I OF 1908). *contd.*

——— s. 3—*concld.*

old waste cannot be ejected on the ground of expiry of a term of lease contained in a contract entered into before the Act came into force. ATCHAPARAJU v. RAJAH VELUGOTI GOVINDA KRISHNAYACHENDRULAVARU (1913).

I. L. R. 38 Mad. 163

——— ss. 8 (excep. 3), cl. (2) (d)—*Inamdar—Right to kudivaram—No presumption in favour of inamdar—No distinction between zamindar and inamdar as to presumption—Surrender or abandonment of holding, not an acquisition by landholder of right to kudivaram—Suit in ejectment—Jurisdiction of Civil or Revenue Court.* The presumption is that an inamdar like a zamindar is not the owner of the kudivaram right. *Per* SADASIVA AYYAR, J.—Surrender or abandonment of the holding by the tenant, is not a case of acquisition of the kudivaram right by the landholder within the terms of the exception to s. 8 of the Estates Land Act and such land does not therefore cease to be part of the estate; consequently the Civil Courts have no jurisdiction to entertain suits in ejectment brought by inamdars against the defendants who were tenants in possession, but the plaints should be returned for presentation to the Revenue Courts. *Per* SPENCER, J.—A narrow interpretation should not be placed on the word 'acquired' in the exception to s. 8, so as to exclude acquisition by an inamdar by surrender or abandonment of the kudivaram right by a tenant. SURYANARAYANA v. PATANNA (1913).

I. L. R. 38 Mad. 608

——— s. 8, excep.; s. 153, proviso; ss. 157 and 163—*Shrotriemdar—Right to kudivaram—Presumption as to—Acquisition of kudivaram right—Surrender or abandonment, effect of—Suit in ejectment—Jurisdiction of Civil or Revenue Courts—Tenant for a term—Tenant in possession after expiry of term—No subsequent recognition by landholder as tenant, effect of—Trespasser.* The plaintiff, who was the shrotriemdar of a certain village, brought a suit in the Civil Court to eject the defendant who was a tenant of some lands forming old waste under a lease for a period of three years which had expired before the Madras Estates Land Act came into force. It was found that the defendant had no occupancy right in the holding, and that he was not recognised as a tenant by the landholder after the expiry of the period of the lease. The defendant contended that the Civil Court had no jurisdiction to entertain the suit. *Held*, that the Civil Court had jurisdiction to entertain the suit. *Per* MILLER, J.—Surrender or abandonment by the tenant is one of the modes in which the landholder can acquire the kudivaram right so as to attract the provisions of the exception to s. 8 of the Estate Land Act. When it is found that a tenant has no occupancy right in his holding and that the land is not private land, the presumption, is that the occupancy right is in the landholder either by the original grant or by prior or subsequent acquisition. *Per* SPENCER, J.—The provisions of s. 153 of the Estates Land Act are not exhaustive of all possible cases of eviction; cases of eviction of tenants under leases or terms not exceeding five years are taken out of the Act by the proviso to s. 153 and consequently out of the jurisdiction of the Revenue Courts. A tenant in possession after the expiry of his term, who has not been recognised by the landholder as a tenant subsequent thereto, is a trespasser within the meaning of s. 163 of the Act, and consequently a suit in ejectment can be instituted against him in a Civil Court. PONNUSAMY PADAYACHI *v.* KARUPPUDAYAN (1914).

I. L. R. 38 Mad. 843

——— s. 42, cl. (1) (a) and (b), cl. (2)—*Enhancement or alteration of rent—Lease-deed—Provision as to payment of rent on excess of area of lands found on measurement—No enhancement or alteration of rent—Previous order of Collector not required—Bengal Tenancy Act (VIII of 1885), ss. 52 and 188.* The proviso found in clause 2 of s. 42 of the Madras Estates Land Act (I of 1908) which requires the order of a Collector before enhancement of rent can be allowed, does not apply to the claim of a land-holder who sues to recover arrears of excess *tirva* due under a lease-deed which contained a provision for payment of *triva* at a specified rate on the excess lands found on measurement over the areas specified in the lease deed. It is only where the landlord wants to enhance the rent, basing his claim on the right granted and declared by s. 42, clauses 1 (*a*) and (*b*), that he should obtain under clause 2, the order of the Collector for such alteration of rent before he could claim the altered rent. *Dintarini Dasi* v. *L. P. D. Broughton, 3 C. W. N. 225*, and *Rama Chunder Chuckrabutty* v. *Girdhur Dutt, I. L. R. 19 Calc. 755*, followed. SIVAGANGA ZAMINDARY, MANAGER TO THE LESSEES OF THE *v.* CHIDAMBARAM CHETTI (1913).

I. L. R. 38 Mad. 524

——— s. 53 (2)—*Distraint for a higher rent than legally due, good for the amount legally due.* S. 53 (2) of the (Madras) Estates Land Act (I of 1903) enables a Collector, in a suit to set aside a distraint to the extent of the amount legally due to the landlord by the tenant under the patta tendered by the landlord. The application of the clause is not confined to the enforcibility of the proper amount of rent, in suits for rent only. RAGHUNATHA ROW SAHIB *v.* VELLAMOONJI GOUNDAN (1914).

I. L. R. 38 Mad. 1140

——— ss. 54 and 78, cl. (2)—*Tender of patta by a landlord to his tenant at his house—Tenant, refusal by—Subsequent affixture of patta to the tenant's house, not to his land—Tender, validity of—Methods of tender under the Act—Delivery of patta, meaning of—Essentials of a valid tender under the Act.* Where a patta was offered by a landlord to his tenant at his house but the tenant refused to receive it, and thereupon the patta was affixed to the tenant's house but not to the land

MADRAS ESTATES LAND ACT (I OF 1908)— *contd.*

——— s. 54—*concld.*

in his holding : *Held*, that there was no valid tender of patta to the tenant as required by ss. 54 and 78, clause (2) of the Madras Estates Land Act (I of 1908). An offer of a patta to the ryot is not delivery to him. When once an offer of patta is made and refused, the tender by delivery cannot be effected, and it then becomes necessary to affix the patta to the land in the ryot's holding. If this is not done, there is no valid tender of patta. Meaning of 'tender' and 'deliver', considered. CHINNATHAMBIAR *v.* MICHAEL (1913).

I. L. R. 38 Mad. 629

——— ss. 77 and 189—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 3. . **I. L. R. 38 Mad. 738**

——— s. 153 proviso—

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 3 (7), 153 AND 157

I. L. R. 38 Mad. 163

——— s. 192—

1. ——— *Presentation of plaint to Head Clerk not authorized to receive—Limitation Act (IX of 1908), s. 4—Court not closed, if the officer on tour only and not on leave—Rule 14 of Civil Rules of Practice.* Plaints under the Madras Estates Land Act (I of 1908) cannot be said to be validly presented, if presented to the Head Clerk of the Collector, unless the Collector has appointed him to receive them. A Court cannot be said to be closed within the meaning of s. 4 of the Limitation Act (IX of 1908) merely because the presiding officer is not in head-quarters but is in camp on tour. Rule 14 of the Civil Rules of Practice does not apply to proceedings before a Revenue Court. THE RECEIVER OF THE NIDADAVOLE AND MEDUR ESTATES *v.* SURAPARAZU (1913). . . . **I. L. R. 38 Mad. 295**

2. ——— *Suit under s. 213—Appellate decree—Second Appeal—Limitation Act (IX of 1908), s. 23—Distraint, no continuing wrong—Cause of action.* A second appeal lies to the High Court under the provisions of the Code of Civil Procedure from an appellate decree passed in a suit instituted under s. 213 of the Estates Land Act. S. 192 of the Act makes the provisions of Chapter XLII of the Code of 1882, applicable and the provisions that give a right of appeal cannot be struck out and those only which prescribe in what manner an appeal is to be heard and determined, retained. Where the proceedings which give rise to a cause of action consist in wrongful distraint, that distraint is not a continuing wrong, and will not therefore give rise to a continuing cause of action under s. 23 of the Limitation Act. *Pamu Sanyasi* v. *Zamindar of Jayapur, I. L. R. 25 Mad. 540*, followed. Continuing cause of action, under English law considered. *Hole* v. *Chard Union, [1894] 1 Ch. 293*, referred to. VENKATARAMIER *v.* VAITHILINGA THAMBIRAM (1913).

I. L. R. 38 Mad. 655

MADRAS ESTATES LAND ACT (I OF 1908)— *concld.*

——— ss. 210, 211, cl. (2), art. 8 of sch. part A—

See LIMITATION. **I. L. R. 38 Mad. 101**

MADRAS FOREST ACT (V OF 1882).

——— offence under—

See PENAL CODE (ACT XLV OF 1860) ss. 40, 79. . **I. L. R. 38 Mad. 773**

MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895).

——— s. 2—

See MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876). S. 2

I. L. R. 38 Mad. 1128

MADRAS IRRIGATION CESS ACT (VII OF 1865).

——— s. 1—"*Engagements*" *construction of—Undertaking by Government to supply water for wet lands free of charge—Engagements at the time of the Permanent Settlement—Subsequent engagements, express or implied, if included under the section—Unauthorised acts of subordinate officers, how far binding on Government—Ratification, essentials of—Communication of, to the other party, if necessary—When complete—Government Orders, how far ratifications—Indian Contract Act (IX of 1872), ss. 196 to 200 and 3 to 6.* In all cases of permanently settled estates, where the incomes derivable from wet lands have been taken into consideration in settling the peshkash payable to Government, there is an implied undertaking of the nature of an enforceable contract on the part of the Government to allow the use of Government water to such wet lands without charge: and this implied undertaking amounts to an engagement within the meaning of the Act. There is a similar implied engagement as regards inams. The word "engagements" in s. 1 of Act VII of 1865 is not qualified in any way and is not limited to the cases of engagements deducible from the circumstances under which the peshkash (or quitrent in the case of an inam) was determined at the time of the Permanent Settlement, but includes all engagements between the Government and the landholder that might have been made or be deducible from the circumstances, at any time after the Permanent Settlement. *Per* AYLING J.—*Held* (on a construction of the Govermnent Orders and other proceedings), that no implied engagement of the latter kind or a ratification thereof by the Government was established. An express ratification by one party within the meaning of s. 197 of the Indian Contract Act, cannot become complete until it is communicated to the other party. Till then it is liable to revocation. This is in accordance with the principles embodied in the provisions of s. 3 to 6 of the Act, which deal with proposals, acceptances and revocations. An order of Government which stated that an unauthorised act of a subordinate officer should not be repudiated must be treated as an incom-

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*concld.*

——— **s. 1**—*concld.*

plete ratification before communication to the landholders concerned, and the same, having been revoked by a later Government Order, is not binding upon the Government. It is not advisable to interpret the plain words of an Act in the light of expressions of the views of Government before its enactment. *Administrator-General of Bengal* v. *Premlal Mullick, I. L. R. 22 Calc. 788, Kadir Bakhsh* v. *Bhavani Prasad, I. L. R. 14 All. 148, Queen-Empress* v. *Bal Gangadhar Tilak, I. L. R. 22 Bom. 112* and *Hilder* v. *Dexter, [1902] A. C. 474*, referred to. *Per* SADASIVA AYYAR, J.—A deliberate and considered ratification by Government reduced into a formal Government Order is conclusive just as a person's declaration in a registered document would stand even if not directly communicated to third persons. Ratification by a long course of conduct is not less effective than a ratification by a formal declaration. Construction of orders of Government and acts of public officers and ratifications of such acts as well as the mode of their communications considered. *Chidambara Row* v. *The Secretary of State for India, I. L. R. 26 Mad. 66, Lutchmee Doss* v. *Secretary of State for India, I. L. R. 32 Mad. 456, Kandukuri Mahalakshmamma Garu* v. *The Secretary of State for India, I. L. R. 34 Mad. 295, Sri Raja Venkata Rangayya* v. *The Secretary of State for India, (1913) Mad. W. N. 417, Kesari Venkatasubbiah* v. *The Secretary of State for India*, 14 *Mad. L. T. 131, Secretary of State for India*, v. *Ambalavana Pandarasannadhi, I. L. R. 34 Mad. 366, Maria Susai Mudaliar* v. *The Secretary of State for India, 14 Mad. L. J. 350, The Secretary of State for India* v. *Peruma Pillai, I. L. R. 24 Mad. 279* and *Venkata Rangayya Appa Row* v. *Secretary of State for India, 24 Mad. L. J. 680*, referred to. RAJAGOPALACHARYULU v. SECRETARY OF STATE (1913). **I. L. R. 38 Mad. 997**

MADRAS LAND ENCROACHMENT ACT (III OF 1905).

——— **ss. 3, 5 and 14**—*Penal assessment, levy of—Suit for declaration of title and recovery of penal assessment—Suit brought after six months from date of notice and levy of penal assessment—Suit barred—Limitation.* Where the plaintiff brought a suit against the Secretary of State for a declaration of his title to certain immovable property and for recovery of penal assessment levied from him by Government under Section 5 of the Madras Act III of 1905, more than six months after the issue of notice and levy of the assessment from him: *Held*, that the suit for declaration of title as well as for recovery of penal assessment was barred under s. 14 of the Madras Act III of 1905. BHASKARADU v. SUBBARAYUDU (1913). **I. L. R. 38 Mad. 674**

MADRAS LOCAL BOARDS ACT (V OF 1884).

——— **ss. 63, 66 and 73—**

See MUTT, HEAD OF.

I. L. R. 38 Mad. 356

MADRAS REGULATION (XXV OF 1802).

See MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876) s. 2.

I. L. R. 38 Mad. 1128

See MADRAS PERMANENT SETTLEMENT REGULATION.

——— **s. 4**—*Pre-settlement inams—Lands held on service tenure in addition to payment of quit-rent—Service to Zemindar—Service quasi-public before settlement—Its discontinuance thereafter—Resumption by Government, right of—Presumption—Onus of proof, as to exclusion prior to Settlement—Evidence Act (I of 1872), ss. 106 and 114, ill. (g).* Where lands in a Zamindari were pre-settlement inams granted on condition of rendering personal service to the zemindar and paying a favourable quit-rent, and the Government resumed such inams on the ground of discontinuance of such services: *Held*, that as the grant was for services purely personal to the zemindar, *primâ facie* the inams formed part of the assets of the zemindari and the zemindar, and *not* the Government, was entitled to resume. *Held*, also, that where such service is rendered in addition to quit-rent, the proviso to s. 4, Regulation XXV of 1802, has no application. The onus of proving that such lands were excluded from the assets of the zemindari, and that the Government had the right to resume lay on them. *Per* TYABJI, J.—The Government having special means of knowledge as to exclusion or otherwise, of these lands, at the settlement, from the Zamindari, the burden was upon them according to s. 106 of the Evidence Act and the necessary presumption against the non-production of the records in their possession should be drawn against them. SRI RAJA PARTHASARATHY APPA RAO BAHADUR *v.* SECRETARY OF STATE (1913). . . . **I. L. R. 38 Mad. 620**

MADRAS RENT RECOVERY ACT (VIII OF 1865).

——— **ss. 33, 35, 39 and 40—**

See LIMITATION ACT (IX OF 1908). s. 22. **I. L. R. 38 Mad. 837**

MADRAS REVENUE RECOVERY ACT (II OF 1864).

——— **s. 59—**

See LIMITATION. **I. L. R. 38 Mad. 92**

MADRAS WATER-CESS ACT (VII OF 1865).

See GRANT, CONSTRUCTION OF—

I. L. R. 38 Mad. 424

MAGISTRATES, BENCH OF.

——— *Magistrate convicting who has not heard all the evidence—Criminal Procedure Code (Act V of 1898), s. 530.* Where the trial of the accused was commenced before a Bench of four Magistrates who heard part of the evidence and continued before the same four Magistrates and another who had joined as the fifth, and all the five Magistrates deliver judgment convicting the accused. *Held*, that the con-

MAGISTRATES, BENCH OF—*concld.*

viction was vitiated and that there must be a re-trial. *Re* SUBRAMANIA AYYAR (1913)
I. L. R. 38 Mad. 304

MAGISTRATES, DUTY OF.

See COMMITMENT.
I. L. R. 42 Calc. 608

——— power of—

See CRIMINAL PROCEDURE CODE, ss.145 AND 522. **I. L. R. 37 All. 654**

——— power and duties of—

See CRIMINAL PROCEDURE CODE, s.206
I. L. R. 37 All. 355

MAHANT OF TEMPLE.

See HINDU LAW—ENDOWMENT.
I. L. R. 37 All. 298

MAHOMEDAN LAW.

	COL.
DOWER	303
GIFT	304
JOINT BUSINESS	304
MARRIAGE	305
MUTAWALLI	307
PRE-EMPTION	308
WAKF	308

See MAHOMEDAN LAW—PRE-EMPTION.

See PRE-EMPTION. **I. L. R. 37 All. 472**

MAHOMEDAN LAW—DOWER.

——— *Marriage—Dower, widows' claim for, charge on estate left by husband—Widow in possession of estate, if can obtain a decree for dower without placing Court in possession of assets—Proper procedure, administration suit.* Under the Mahomedan Law, when a widow is in possession of the undistributed property of her deceased husband, and her dower or any part of it is due and unpaid, she is entitled, as against the other heirs of her husband, to retain such possession until her dower debt is paid, provided that her possession was obtained lawfully and without force or fraud. The widow in such a case may be required to account for the profits received by her, but she would be entitled to have set off against the sum received by her the income she might have made from her dower money if it had been paid to her immediately on the death of her husband. The claim for dower is a debt due from the entire estate of the deceased and ranks equally and rateably with the claims of other creditors. Consequently the share taken by the widow by right of inheritance is liable proportionately for the satisfaction of her dower debt in the same way as the shares taken by the other heirs and the liability of each heir is limited to the extent of the assets in his or her hands. Where the widow has obtained and retained possession of the entire estate she has no cause of action for a money-decree against the other heirs. In such a case, if the widow desires to have the question of her dower settled, the proper course for her to follow is to institute an administration suit, in which the property can be placed in the hands of the Court, the amount of her claim, if disputed, investigated, and appropriate directions given for the satisfaction of her claim by sale of the assets or otherwise. In a case in which the widow is in possession of no portion of the estate, she may sue the persons in possession to enforce her claim, obtain a decree for the entire amount and realise the sum due out of the assets in their hands. In a case where the widow is in possession of a portion of the estate and the other heirs have possession of the remainder, she can seek to recover her dower by way of an administration suit, or by a suit against the other heirs provided she offers to surrender possession of the property in her hands. If she adopts the latter alternative the litigation really assumes the character of an administration suit. SHARAFAT BAHADUR *v.* SULTAN BEGUM (1914).
19 C. W. N. 502

MAHOMEDAN LAW—GIFT.

1. ——— *Gift made in lieu of dower—Nature of such gift.* The provisions of the Mahomedan Law applicable to gifts, made by persons labouring under a fatal disease, do not apply to a so-called gift made in lieu of a dower-debt which is really of the nature of a sale. *Ghulam Mustafa* v. *Hurmat, I. L. R. 2 All. 854,* followed. *Abbas Ali* v. *Karim Bakhsh, 13 C. W. N. 160,* and *Bibi Janbi* v. *Hazrath Saib, 21 Mad. L. J. 958,* referred to. ESAHAQ CHOWDHRY *v.* ABEDUNNESSA BIBI (1914). **I. L. R. 42 Calc. 361**

2. ——— *Registration of gift by Mahomedan if dispenses with delivery of possession.* Under s. 129 of the Transfer of Property Act, the registration of a deed of gift in accordance with s. 123 cannot make up for the want of delivery of possession required by the rules of Mahomedan Law. ROHIM BUKSH MANDAL *v.* SHAJAD AHMAD CHAUDHURY (1914).
19 C. W. N. 1311

MAHOMEDAN LAW—JOINT BUSINESS.

——— *Joint business by two brothers—Death of one of them—Subsequent businesses by survivor and sons of the deceased—Properties purchased out of profits of joint business—Moneys collected by survivor—Suit by heirs of the deceased for their share—Nature of suit—Limitation Act (IX of 1908), Arts. 106, 123 and 127—Joint family property, if exists in Mahomedan law—Exclusion, proof of, if necessary.* Two Mahomedan brothers carried on a joint business, and one of them died nineteen years before suit leaving three sons and three daughters. Some properties were purchased out of the profits of the joint business in the name of the surviving brothers; the latter subsequently carried on several other businesses along with two of the sons of the deceased brother and with a stranger who died more than three years before suit. The heirs of the deceased brother brought

MAHOMEDAN LAW—JOINT BUSINESS—*concld.*

the present suit against the surviving brother and others to recover their share of the properties acquired out of the profits derived from the several businesses and their share of the moneys collected in the same. *Held*, that the suit was one for an account and a share of the profits of a dissolved partnership and was barred under Art. 106 of the Limitation Act (IX of 1908). Under the Mahomedan Law there is no such thing as joint family property. If the members of a Mahommedan family succeed to property on the death of a relation, each of them takes a share of each item of the property; and a suit by such a member for a share is governed by Art. 123 and not Art. 127 of the Limitation Act. *Abdul Kader* v. *Aishamma, I. L. R. 16 Mad. 61*, distinguished. MOHIDEEN BEE *v.* SYED MEER SAHEB (1915).

I. L. R. 38 Mad. 1099

MAHOMEDAN LAW—MARRIAGE.

1. ——— *Marriage—Minor—Guardian for marriage, functions and position of—Marriage of minor ward, necessity of consent of Court for— Functions of Court in such cases—Procedure to be followed by the guardian for marriage of Mahomedan infant—Guardians and Wards Act (VIII of 1890) ss. 4(2), 24, 25, 26, 41, sub-s. (1) cl. (d), 42 sub-s. (1) 47 cl. (a)—Practice—Order of District Judge not appealable.* In the case of Mahomedans the words "disposal in marriage" cannot be treated as included in the general words "such other matters as the law to which the word is subject requires" occurring in s. 24 of the Guardians and Wards Act. In the absence of express statutory provision to this effect, it cannot reasonably be held that the Mahomedan Law on the subject of guardianship in marriage has been abrogated by implication by s. 24 of the Guardians and Wards Act. Where the District Judge of Birbhum, in the matter of the disposal in marriage of a Mahomedan female minor in respect of whose person and property guardians had been appointed by him, proceeded to select a suitable husband for the minor from the preliminary list of possible candidates prepared by his Hindu Nazir (the guardian of the property), in opposition to the selection of the guardian of the person (her mother), and of the guardian for marriage (her father's step-brother), both of whom had initiated these proceedings: *Held*, that the proceedings before the District Judge had been throughout irregular. It was not the function of the District Judge to act as match-maker. But a ward of Court could not marry without the consent of the Court. *Eyre* v. *Shaftesbury, 2 P. Wms. 103, Jeffrys* v. *Vantes-warstwarth, Barn Ch. 141, Tombes* v. *Elers, 1 Dick 88, Subhadra Koer* v. *Dhajadhari Goswami, 15 C. L. J. 147*, followed. *Bai Divali* v. *Moti Karson, I. L. R. 22 Bom. 509*, disapproved, *Held*, further (after laying down the proper procedure to be followed in cases of this description), that the choice had to be made in the first instance by the guardian for marriage, and if on the materials before the District Judge he was satisfied that the marriage was not unsuitable, he was to

MAHOMEDAN LAW—MARRIAGE—*contd.*

sanction it. *Held*, also, that the order of the District Judge was not open to appeal, as s. 47 cl. (*a*) of the Guardians and Wards Act read with s. 43, sub-s. (*1*) and ss. 24, 25 and 26 did not cover the case. MANIJAN BIBI *v.* DISTRICT JUDGE, BIRBHUM (1914). . . I. L. R. 42 Calc. 351

2. ——— *Marriage—Mahomedans—Shiahs—Muta and nikah marriage, different consequences—Proof of marriage—Co-habitation—Declaration by the man—Appreciation of evidence in Trial and Appellate Courts, when neither has seen witnesses—Circumstances of suspicion calling for scrutiny—Examination of evidence by Judicial Committee—Deference to experience of High Court Judges—Suit by one of several co-heirs—The right of others time-barred—Decree for share only for plaintiff and for the balance for defendants.* A *muta* marriage is, according to the law which prevails among Shiahs, a temporary marriage, its duration being fixed by agreement between the parties. It does not confer on the wife any right or claim to her husband's property, but children conceived, while it exists, are legitimate and capable of inheriting from their father. A *nikah* marriage is a religious ceremony and confers on the woman the full status of wife, and children born after it are legitimate. The term of a *muta* marriage may from time to time be extended by agreement. Where it was alleged by the plaintiff, who claimed to be the only legitimate child and sole heiress of *M*, a Shiah Mahomedan, that her (the plaintiff's) father, *M*, and mother, *A*, had lived together as man and wife for many years, but that they were married in *nikah* from only 1½ years before her birth, and it was urged in defence that she was illegitimate and that if she was legitimate, so were two other daughters of *M* and *A*, born before the plaintiff, and that in the latter case plaintiff could recover one-third only of the inheritance, the claim of her sisters being time-barred, and in evidence the plaintiff tendered a deed of dower executed by the father at the time he was alleged to have contracted the *nikah* marriage in which however *M* had expressly declared that he had contracted *muta* with *A* in the beginning but now for reasons stated in the deed had married her in *nikah* form, and examined witnesses who deposed to the marriage ceremony taking place on the same date; and the Subordinate Judge (who, however, had not seen the witnesses examined) disbelieved the witnesses and held the deed to be a forgery, but on appeal the High Court having before it additional evidence of considerable importance held that the deed was genuine and that the *nikah* marriage had been performed as deposed to by the witnesses: *Held* by the Judicial Committee; after a careful consideration of the evidence, that they ought not to reverse the High Court's findings, though they thought there were good reasons why both the deed itself and the evidence of the witnesses in question ought to be looked upon with suspicion and scrutinised with great care. The Judges of the High Court who came to these findings had

MAHOMEDAN LAW—MARRIAGE—*concld.*

necessarily a large experience in matters of this nature, and the Subordinate Judge had no more opportunity than they of seeing and observing the demeanour of the witnesses, and they, on the other hand, had evidence before them which was not before the Subordinate Judge. *Held*, also, on the evidence, that if the deed were treated as valid and the plaintiff's witnesses as reliable, there was considerable evidence that co-habitation of *M* and *A* commenced in a *muta* marriage, and that in the absence of evidence to the contrary such marriage must be taken to have subsisted throughout the period which covered the conception and birth of plaintiff's sisters. That their claim as such being statute-barred, the expiration of the period of limitation would accrue for the benefit of the defendant and not for the benefit of the plaintiff. SHOHARAT SINGH *v.* JAFRI BIBI (1914).

19 C. W. N. 225

3. _____ *Marriage —Fosterage—Marriage of a woman's natural son with her foster-daughter, if valid.* The prohibition of Mahomedan Law to the marriage of a woman's natural son with her foster-daughter is absolute and not conditional upon the birth of the one and the suckling of the other occurring within any limited period. The principle of *factum valet* does not render good in law a marriage which ought not in law to have been celebrated. *Radha Mohun* v. *Hardai Bibi, I. L. R. 22 Mad. 398*, followed. JANAB ALI MIA *v.* NAZAMADDIN (1915).

19 C. W. N. 897

MAHOMEDAN LAW—MUTAWALLI.

_____ *Mutawalliship of property annexed to a mosque—Right to succeed by principle of heredity—Proof and validity of such right.* *Held*, on the facts of the case, that the plaintiff who claimed to be the mutawalli of the plaint mosque by right of heredity had not established by clear proof that that was the method of succession to the office and that he was therefore the lawful mutawalli. *Held*, also, as a valid appointment of a mutawalli could be made only in one of three modes, *viz.*: (*a*) by the original author, of the waqf or by some person expressly authorized by him, or (*b*) by the executor of the author or (*c*) lastly, by the Court, any person claiming to be a mutawalli by heredity must show by strict proof of precedents that that mode of appointment was one which must be necessarily deemed to have been sanctioned by the author of the trust. It is frequently provided that each *mutawalli* should have the power to appoint his successor; where there has been a long established practice for the mutawalli to nominate his successor, it is assumed (unless the contrary is proved) that power to do so was given by the founder of the *waqf*. But where from past practice, it is sought to be established that the *mutawalliship* is to devolve hereditarily, there must be something from which a rule of hereditary succession sufficiently precise or definite may be deduced; and the mere fact that for some time prior to 1874 three persons from the family of the plaintiff were successively mutawallis does not show that mutawalliship devolved by heredity in the absence of proof that they were not appointed or nominated by somebody. *Sayad Abdula Edrus* v. *Sayad Zain Sayad Hasan Edrus, I. L. R. 13 Bom. 555, 562*, referred to. *Per* SADASIVA AYYAR, J. Heredity as a principle of succession to any office is highly objectionable. PHATMABI *v.* HAJI MUSA SAHIB (1913).

I. L. R. 38 Mad. 491

MAHOMEDAN LAW—PRE-EMPTION.

_____ *Pre-emption—Sale—Demands—Assignment in lieu of dower debt.* If at the time of *talab-i-mawasibat* the pre-emptor has an opportunity of invoking witnesses, in the presence of the seller or the purchaser or on the premises, to attest the immediate demand, it would suffice for both the demands, and there would be no necessity for the second demand. *Nundo Pershad Thakur* v. *Gopal Thakur, I. L. R. 10 Calc. 1008*, referred to. *Held*, further, that when property is sold by a husband to his wife in lieu of dower a suit for pre-emption can be maintained by a person entitled to a preferential right to purchase that property. *Fida Ali* v. *Muzaffar Ali, I. L. R. 5 All. 65*, followed. NATHU *v.* SHADI (1915). . . . **I. L. R. 37 All. 522**

MAHOMEDAN LAW—WAKF.

See MUSSALMAN WAKF VALIDATING ACT (VI OF 1913), s. 3.

I. L. R. 39 Bom. 563

1. _____ *Constitution of wakf by deed of trust—Objects charitable and religious—Validity of wakf.* Where with the object of dedicating a house to the service of the Imams, Hassan and Hussain, and for other religious purposes, the settler had conveyed the house to his grand-daughter and his grand-son on trust for the proper observance of the objects mentioned in the deed:—*Held*, that there was a valid wakf. *Delross Banoo Begum* v. *Ashgur Ally Khan, 15 B. L. R. 167*, discussed. *Phul Chand* v. *Abkar Yar Khan, I. L. R. 19 All. 211, Biba Jan* v. *Kalb Husain, I. L. R. 31 All. 136, Mazhar Husain Khan* v. *Abdul Hadi Khan, I. L. R. 33 All. 400*, referred to. RAM CHARAN LAW *v.* FATIMA BEGAM (1915). **I. L. R. 42 Calc. 933**

2. _____ *Dedication for expenses of mosque and maintenance of family members, how far valid* Where a person belonging to the Hanafi School of Mahomedan Law made a wakf whereby he provided for the payment of expenses of and in connection with, a mosque and for regular monthly maintenance of the members of his family: *Held* that the dedication in connection with the mosque was valid, but not so the provision for the payment of maintenance to members of the family. RAHIMUNNISSA BIBI *v.* SHAIKH MANIK JAN (1914). . . **19 C. W. N. 76**

3. _____ *Wakf—Res judicata—Decision in previous suit between same individuals, but brought by plaintiff in another capacity—Decision of High Court on legal grounds de-*

MAHOMEDAN LAW—WAKF—*concld.*

claring a wakf invalid, conclusive in later suit even when not strictly res judicate. Where in a suit by a creditor or representative of the wife of the original owner of property which the latter had made wakf before his death, it was declared by the High Court on appeal on legal grounds that the wakf was invalid: *Held*, that this adjudication by the High Court of the invalidity of the wakf was binding between the parties to a subsequent suit brought against the same defendant by the same plaintiff, but suing now as the heir of the owner's daughter. MAHOMED BUKTH MAJUMDAR *v.* DEWAN AJMON RAJA (1915). **19 C. W. N. 967**

MAIDEN'S PROPERTY.

See HINDU LAW—SUCCESSION.
I. L. R. 38 Mad. 45

MAINTENANCE.

See DIVORCE ACT (IV OF 1869), s. 37.
I. L. R. 39 Bom. 182

See HINDU LAW—ADOPTION.
I. L. R. 39 Bom. 528

See MALABAR LAW.
I. L. R. 38 Mad. 79

——— **of mother, right to—**

See HINDU LAW—PARTITION.
I. L. R. 38 Mad. 556

——— **right to—**

See MALABAR LAW.
I. L. R. 38 Mad. 79

——— **right to get, from husband's estate—**

See HINDU LAW—MAINTENANCE.
I. L. R. 38 Mad. 153

MAJORITY.

See MORTGAGE BY MINOR.
I. L. R. 38 Mad. 1071

——— **age of, for making a will—**

See HINDU LAW—MINOR.
I. L. R. 38 Mad. 166

MAJORITY ACT (IX OF 1875).

——— **s. 3—**

See HINDU LAW—MINOR.
I. L. R. 38 Mad. 166

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900).

——— **ss. 5 and 19**—*Compensation, rate of, for tenants' improvement—Compensation, amount of, methods of fixing—Contract made before 1st January 1886—No express reference to tenants' right to make improvements—Contract less favourable to tenant than ss. 5 and 6 of the Act—Contract not binding—ss. 5 and 6 applicable.* Where a contract, entered into between a landlord and a tenant in Malabar, before the 1st January 1886, regulated the rates of compensation claimable by the tenant for improvements, or provided for the methods of fixing the amount of compensation due to him

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900)—*concld.*

——— **s. 5**—*concld.*

but did not expressly refer to the tenant's right to make improvements: *Held* (by the Full Bench) that the contract is not binding on the tenant if it is less favourable to him than ss. 5 and 6 of the Malabar Compensation for Tenants' Improvements Act (I of 1900), and that the tenant is entitled to claim compensation according to the provisions of the Act. *Held*, also, that there is no inconsistency between the judgment in *Randupurayil Kunhisore* v. *Neroth Kunhi Kannan, I. L. R. 32 Mad. 1*, and the judgments in *Kozhikot Sreemana Vikraman* v. *Modathil Ananta Patter, I. L. R. 34 Mad. 61*, and *Paru Amma* v. *Moothoram, 22 Mad. L. J. 221*, and that the two last-mentioned cases were rightly decided. KOCHU RABIA *v.* ABDURAHMAN (1913). . . . **I. L. R. 38 Mad. 589**

MALABAR LAW.

1. ——— *Marumakkattayam—Females' self-acquisition, descent of, to her own heirs and not to tarwad—Tavazhi, meaning of.* The self-acquisitions of a female member of a Marumakkattayam tarwad do not lapse on her death to her tarwad, but descend to her tavazhi, which will be her issue if she has any, and in the absence of the issue will be her mother and her descendants. Tavazhis defined. *Govindan Nair* v. *Sankaran Nair, I. L. R. 32 Mad. 351*, distinguished. *Ummanga* v. *Appadorai Patter, I. L. R. 34 Mad. 387*, overruled. KRISHNAN *v.* DAMODARAN. (1912).
I. L. R. 38 Mad. 48

2. ——— *Right to maintenance—Members of a tavazhi—Maintenance out of tavazhi property—Suit against managing member of tavazhi—Tarwad property, insufficient for maintenance—Gift by husband to wife—Mention of children—Interest taken by wife, whether absolute—Right of tavazhi—Construction of deed of gift.* A member of a tavazhi has a right to sue the managing member of the tavazhi for his maintenance if maintenance is refused by such managing member, where the karnavan of the tarwad is unable to maintain the member out of tarwad property. It is immaterial whether the member of the tavazhi seeking maintenance, has private means sufficient to provide for him an adequate maintenance without necessity of recourse to the tavazhi property. *Putravakasam* property is held by the members of the tavazhi to which it belongs with the ordinary incidents of tarwad property. *Per* ABDUR RAHIM, J.—Even apart from the fact whether there is sufficient property of the tarwad to which a member of a tavazhi can look for maintenance, he has a right to demand an allowance in the nature of maintenance from the tavazhi property itself. Maintenance is not a mere subsistence allowance. It should be based on the value of the tarwad property, the position of the members and not confined to what is just sufficient to satisfy the needs of the members. A member of a tavazhi is entitled to an allowance for maintenance both from the tavazhi and

MALABAR LAW—*concld.*

tarwad properties. Where a deed of gift in favour of a woman is clearly expressed to be to her and her children, there is no warrant for construing it as conferring on the donee an absolute title to the property given where the donee is the wife of the donor and a member of a Marumakkattayam tarwad. It makes no difference that the karnavan of the tarwad joined in the gift. In estimating the amount of the income of the tavazhi property out of which maintenance is payable, the interest payable upon debts binding on the tavazhi should be deducted but not interest on debts contracted after the period for which maintenance is claimed. NAKU AMMA *v.* RAGHAVA MENON (1912) . . **I. L. R. 38 Mad. 79**

3. ——— *Nambudri Illom—No liability of sons to pay their father's debts.* A Nambudri Illom differs in many respects from an ordinary joint Hindu family on account of the impartibility of its property and its close resemblance to a Nair tarwad. The rule of Hindu Law which imposes the duty on a son to pay his father's personal debts, neither illegal nor immoral, is not applicable to Nambudris; and the mere fact that there are no other members in the 'Illom' besides the sons and grandsons of the Nambudri debtor, cannot affect the principle. *Nilakandan* v. *Madhavan, I. L. R. 10 Mad. 9,* and *Govinda* v. *Krishnan, I. L. R. 15 Mad. 333,* followed. *Kunhichekan* v. *Lydia Arucanden, (1912) Mad. W. N. 386,* considered. *Muttayan* v. *Zemindar of Sivagiri, I. L. R. 6 Mad. 1,* distinguished. KUNHU KUTTI AMMAH *v.* MALLAPRATU (1915).

I. L. R. 38 Mad. 527

MALABAR TENANTS' IMPROVEMENTS ACT MAD. I OF 1900.

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.

——— ss. 3 and 5—*Tenant introduced by mortgagor after mortgage—Purchaser in execution of decree on mortgage—Right to improvements against—Right of tenant to improvements not confined against lessor.* The word "tenant" in s. 3 of the Malabar Tenants' Improvements Act (Madras Act I of 1900) includes also a lessee from a mortgagor after the creation of a mortgage in favour of a stranger. Hence, such a tenant is entitled under s. 5 of the Act to the value of improvements effected by him even as against a purchaser in execution of the decree under a mortgage. S. 5 of the Act does not confine the tenant's rights to improvements only as against his lessor. KANARAN *v.* CHIRUTHA (1914).

I. L. R. 38 Mad. 954

MALICE.

See MARRIAGE, CONTRACT OF.

I. L. R. 39 Bom. 682

MALICIOUS PROSECUTION.

——— *Suit for damages—"Prosecution," what it means and when commences—Accused attending at judicial enquiry upon notice, if may sue on failure of prosecution.* The action for damages for malicious prosecution is not a creature of any statute. To determine whether such an action lies, the term "prosecution" should not be interpreted in the restricted sense in which it is used in the Code of Criminal Procedure. A proceeding maliciously taken against a person to compel him to furnish surety to keep the peace may be made the foundation of a suit for damages for malicious prosecution. A prosecution exists when a criminal charge is made before a judicial officer or tribunal, and any person who makes or is actively instrumental in the making or prosecuting of such a charge is deemed to prosecute it. If a person, maliciously and without reasonable and probable cause, sets the machinery of the criminal law in motion, he is responsible for the consequence and cannot escape liability on the ground that the action taken by the Court was such as he did not intend or was erroneous in law. The prosecution commences as soon as the complaint is made to the Magistrate irrespective of the result of the prosecution or of the stage at which it may fall through. When no action at all has been taken against the plaintiff upon such a complaint, the action would fail, not because there was no prosecution commenced, but because there was no damage done to the plaintiff. Where on a complaint being filed by the defendant against the plaintiff, the Magistrate ordered an enquiry by a Subordinate Magistrate, and the latter gave the plaintiff notice so that he might appear at the enquiry and be heard, and the plaintiff did so; and the complaint was in the end dismissed: *Held,* that upon these facts, the plaintiff had a cause of action for damages for malicious prosecution and would be entitled to get damages for loss which he may prove to have suffered in consequence. That it was not open to the defendant in such a suit to urge that the plaintiff need not have appeared. *Kandasami* v. *Subramania, 13 Mad. L. J. 370,* and *Meeran* v. *Ratnavelu, I. L. R. 37 Mad. 181,* dissented from. *Crowdy* v. *O'Reilly, 17 C. W. N. 554: s. c. 17 C. L. J. 105,* followed. *Clarke* v. *Postan, 6 C. & P. 423, Yates* v. *Queen, 14 Q. B. D. 648, De Rozario* v. *Golapchand, I. L. R. 37 Calc. 358,* and *Golap Jan* v. *Bholanath, 15 C. W. N. 917: s. c. I. L. R. 38 Calc. 880,* considered. *Ahmed Bhai* v. *Framjee, I. L. R. 28 Bom. 226,* approved. BISHUN PERSHAD NARAIN SINGH *v.* PHULMAN SINGH (1914).

19 C. W. N. 935

MALIKANA.

——— *Interest in immoveable property—Money charged on immoveable property—Limitation Act (XIV of 1859), s. 12 (IX of 1871), Art. 132, Sch. II—Right not exercised for more than 12 years before Act IX of 1871 came into operation—Right if barred.* Under Act XIV of 1859, *malikana* was an interest in immoveable property and governed by Act XIV of 1859, s. 12, and would be barred if there had been no enjoyment of the *malikana* for a period of 12 years. *Bhoalee Singh* v. *Neemoo Behoo, 12 W. R. 498, Gobind Chunder Roy Choudhary* v. *Ram Chunder Choudhary, 19 W. R. 94,* and *Heerranund Shoo* v. *Ozeerun, 9 W. R.*

MALIKANA—*concld.*

102, followed. Where therefore the right to *malikana* was established by decree of Court in 1855 but the right was not enjoyed for more than 12 years before Act IX of 1871 came into force, the right was extinguished under Act XIV of 1859 and could not be revived by any subsequent statute of limitation. *Chhagan Lal* v. *Bapubhai, I. L. R. 5 Bom. 68*, distinguished. MAHESHRI PROSHAD SINGH *v.* BAIJ NATH HAZARI (1913).

19 C. W. N. 410

MALIKANA DUES.

See CIVIL PROCEDURE CODE (1908), s. 94. O. XXXVIII, R. 5; O. XXXIX, R. 1.

I. L. R. 37 All. 423

MAMLATDAR.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195 (1) (*c*).

I. L. R. 39 Bom. 310

MAMLATDARS' COURTS ACT, (BOM. ACT II OF 1906).

———— s. 23—*Possessory Suit—District Deputy Collector's authority to revise—Bombay General Clauses Act (Bom. Act I of 1904), s. 3—The term "Collector" does not include "District Deputy Collector"—Land Revenue Code (Bom. Act V of 1879), s. 10.* The term "Collector" in s. 23 of the Mamlatdars' Courts Act (Bom. Act II of 1906) does not include "District Deputy Collector" in view of the express definition of the term in s. 3 of the Bombay General Clauses Act (Bom. Act I of 1904). A District Deputy Collector has, therefore, no authority to pass any order under the Mamlatdars' Courts' Act (Bom. Act II of 1906). *Keshav* v. *Jairam, I. L. R. 36 Bom. 123*, dissented from. SONU JANARDAN *v.* ARJUN WALAD BARKU (1915). . . . **I. L. R. 39 Bom. 552**

MANAGER.

See HINDU LAW—JOINT FAMILY.

I. L. R. 39 Bom. 715

MANDAMUS OR INJUNCTION.

See MADRAS CITY MUNICIPAL ACT (III OF 1904). **I. L. R. 38 Mad. 41**

MAPPILLAS OF NORTH MALABAR.

———— *Law applicable—Question of fact—Custom, requisites of a valid—Judicial notice—Reasonableness or legality—Question of law—Custom derogating from the Mahomedan law—Madras Civil Courts Act (III of 1873), s. 16.* The law applicable to the parties to a suit is the law which the parties as a matter of fact by their customs and usages have adopted, not the law which the Courts by a consideration of the historical circumstances relating to the parties or of their religious books or otherwise consider to be the law that they ought to have adopted. If that law being sufficiently certain and not opposed to public policy is of such a nature that the Courts can give effect to it, then the principles underlying s. 16 of the Madras Civil Courts Act require that they should give effect to it.

MAPPILLAS OF NORTH MALABAR—*concld.*

Jammya v. *Diwan, I. L. R. 23 All. 10, Muhammad Ismail Khan* v. *Lala Sheomukh Rai, 17 C. W. N. 97*, and *Hirbae* v. *Sonabae, Per O. C., 110*, referred to. The question whether the particular parties are governed by the Marumakkattayam or the Mahomedan law, is one of tact. *George* v. *Davies, [1911] 2 K. B. 445, Assan* v. *Pathumma, I. L. R. 22 Mad. 494*, and *Kunhimbi Umma* v. *Kandy Moithin, I. L. R. 27 Mad. 77*, referred to. A custom to hold good in law must be not unreasonable and must apply to matters which the written law has left undetermined, and the majority at least of any given class of persons must look upon it as binding and it must be established by a series of well-known, concordant, and, on the whole, continuous instances. The question whether an alleged rule of conduct can be enforced at all or whether it is uncertain or opposed to public policy or unreasonable is one of law and may be considered irrespective of the question whether the custom actually exists. *Moult* v. *Halliday, [1898] 1 Q. B. 125*, followed. S. 16 of the Madras Civil Courts Act, discussed. KUNHAMBI *v.* KALANTHAR (1914).

I. L. R. 38 Mad. 1052

MARITIME NECESSARIES.

See ARREST OF SHIP.

I. L. R. 42 Calc. 85

MARRIAGE.

See DIVORCE ACT (V OF 1869), s. 57.

I. L. R. 38 Mad. 452

See HINDU LAW—MARRIAGE.

I. L. R. 39 Bom. 538

See MAHOMEDAN LAW—MARRIAGE.

I. L. R. 42 Calc. 351

———— **dissolution of—**

See BOMBAY CIVIL COURTS ACT (XIV OF 1869), s. 1. **I. L. R. 39 Bom. 136**

———— *Contract of Marriage—Procuring breach of contract—Conspiracy—Cause of action—Malice, an essential ingredient—Tort.* The first plaintiff betrothed his son, the second plaintiff, to one *J.* Subsequently *J.*'s father married her to the first defendant. Thereupon the plaintiffs brought this action against the first defendant and his sisters, the second and third defendants, to recover damages, alleging that they (the defendants) had plotted and conspired together wrongfully to procure the breach of the first contract of marriage. The conspiracy alleged was not proved at the trial nor was it proved that the first defendant knew at the time of his marriage with *J.* of her previous betrothal to the second plaintiff. *Held*, (*i*) that the suit was not maintainable; (*ii*) that no legal right inhering in the plaintiff had been violated, since, according to Hindu law, by which the parties were governed, a father was entitled to break off his daughter's engagement, should a more suitable bridegroom be available. In an action of conspiracy to procure a breach of contract malice is an essential ingredient of the cause of action. Rule in *Lumley* v. *Gye, 22 L. J. Q. B. 463*,

MARRIAGE—*concld.*

considered and its universal applicability doubted. KHIMJI VASSONJI *v.* NARSI DHANJI (1914) **I. L. R. 39 Bom. 682**

MARUMAKKATTAYAM.

See MALABAR LAW **I. L. R. 38 Mad. 48**

MATADARS ACT (BOM. VI OF 1887).

——— **ss. 9 and 10**—*"Heir next in succession"—Succession to Matadari property—Succession not confined to the limits of Matadar family—Heir to be ascertained by reference to the personal law governing the parties.* One *R*, the representative Matadar who inherited his Mata from his mother's side, having died, disputes arose as to the succession to the Matadari property between *B*, who was the daughter of a maternal cousin of *R*, and *D* who was the grand-nephew of *R*. *Held*, that *D* was the preferential heir to *B*, as in order to ascertain the heir of a deceased Matadar, the Court was not confined to the limits of the Matadar family and should have in the first instance reference to the personal law which governed the parties. DAYA KHUSAL *v.* BAI BHIKHI (1915) **I. L. R. 39 Bom. 478**

MAYUKHA.

——— **Ch. VIII, pl. 18**—

See HINDU LAW—SUCCESSION. **I. L. R. 39 Bom. 87**

MEASURE OF RIGHT.

See EASEMENT . **I. L. R. 42 Calc. 46**

MELVARAM.

——— **grant of**—

See MADRAS ESTATES LAND ACT (I OF 1908) S. 8. . **I. L. R. 38 Mad. 891**

MELVARAMDAR.

——— **receiver of**—

See LIMITATION ACT (IX OF 1908), S. 22. **I. L. R. 38 Mad. 837**

——— **right of, to trees**—

See INAM REGISTER. **I. L. R. 38 Mad. 155**

MEMORANDUM OF AGREEMENT.

See STAMP ACT (II OF 1899), *s.* 57. **I. L. R. 38 Mad. 349**

MERCHANT SEAMEN ACT (I OF 1859).

——— **s. 58, cl. 4**—*Merchant Shipping Act (57 and 58 Vic. C. 60), s. 114, clause 3, and 225, clauses (b) and (c)—Wilful disobedience of lawful commands—Order given to transfer from one ship to another—Seaman disobeying the order—Clause about transfer in articles of agreement not ultra vires.* The accused signed articles of agreement in London with the Master of the SS. *Arcadia* (a steamer belonging to the Peninsular and Oriental Steam Navigation Company), under which he agreed *inter alia* to obey the lawful commands of the

MERCHANT SEAMEN ACT (I OF 1859)—*concld.*

——— **s. 58, cl. 4**—*concld.*

Master or the superior Officers, and to transfer to any other vessel of the Company, when required during the period of service. These articles were initialled by an Officer of the Board of Trade. When the SS. *Arcadia* arrived in the Bombay Harbour it was sold by the Company to an Indian Merchant. The accused was then ordered by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS. *Arcadia* to transfer himself to the SS. *Salsette*, another boat belonging to the Company. For a wilful disobedience of this order, the accused was convicted under s. 83, clause 4 of the Merchant Seamen Act (I of 1859). The accused applied to the High Court against the conviction, contending, first that the article respecting transfer was *ultra vires*, and secondly, that the order as to transfer given by the Marine Superintendent of the Company was not a lawful command:—*Held*, that having regard to s. 114, clause 3 of the Merchant Shipping Act (57 and 58 Vic. C. 60) and to the fact that the articles of agreement had been initialled by an Officer of the Board of Trade, the article as to transfer was not *ultra vires*. *Held*, further, the order to transfer having been given by the Marine Superintendent of the Company in the presence of the Chief Officer of the SS. *Arcadia* was a lawful command of the latter, failure to obey which was punishable under s. 83, clause 4 of the Merchant Seamen Act (I of 1859). EMPEROR *v.* A. GOODHEW (1915) . . . **I. L. R. 39 Bom. 558**

MERCHANT SHIPPING ACT (57 & 58 VICT. C. 60).

——— **ss. 114, cl. (3), and 225, cl. (B) and (C)**—

See MERCHANT SEAMEN ACT (I OF 1859) S. 83, CL. (4) **I. L. R. 39 Bom. 558**

MESNE PROFITS.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, RR. 2 AND 4. **I. L. R. 38 Mad. 829**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII of 1879), s. 13. **I. L. R. 39 Bom. 587**

——— **right to past, transfer of**—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 6, CL. (*e*). **I. L. R. 38 Mad. 308**

MINE.

See MINERAL RIGHTS.

——— *Coal mine, working of, by lessee—Suit for perpetual injunction to restrain lessee from connecting leased mine with other mines, from instroke working and from cutting or changing the thickness of supporting pillars—Suit, if to fail if premature in respect of one of several reliefs—Injunction, circumstances justifying the grant of—Breach of contract between lessor and lessse*

MINE—*contd.*

—Lessee if bound to leave barrier of coal to prevent communication with adjoining mine—Instroke, right of—Lessee, if can be deprived of right of instroke working without express provision in lease—Presumption of right in favour of lessee—Subsidence, owner's right of support against—Circumstances under which Court should protect such right by injunction. After the death of the lessee of a coal-mine his sons transferred their interest in the mine to a person who had mines in the immediate vicinity. The plaintiff lessor sued for a perpetual injunction to restrain the purchaser, (i) from connecting the disputed mine with the adjacent mines, (ii) from raising the coal from the disputed mine through the pits of his mines, (iii) from ever cutting off or changing or diminishing the thickness of the pillars of coal in the disputed mine. The Subordinate Judge granted an injunction on the first two grounds and refused an injunction on the third ground. It appeared that under the lease the lessee was entitled to remove all the coal of the demised mine, but he undertook to manage the work according to the prevailing practice with special care and expertness. It was not suggested that the defendant had acted in breach of this covenant. The plaintiff alleged that the transfer had been made with a view to enable the purchaser to injure the plaintiff by an improper working of the mine; he further asserted that there was a conspiracy amongst the defendants who had threatened to cause him loss. The defendant denied the truth of these allegations. *Held*, that it is well settled that a man who seeks the aid of the Court by an injunction must show that the act complained of is in fact a violation of his right or is at least an act which if carried into effect will necessarily result in a violation of the right. The mere prospect or apprehension of injury or the mere belief that the act complained of may or will be done is not sufficient. That as the defendant claimed a right to take away the entire coal, the Court was competent to grant an injunction if it was established that what the defendant asserted he had a right to do would constitute a breach of contract between the lessor and lessee. That as regards the mode of removal of the coal, the plaintiff failed to prove that he had any ground for an injunction in this respect, but the suit could not consequently be deemed premature in respect of all the reliefs claimed, though the objection might hold good with regard to one of them. That the principle that a lessee who removes a barrier between the demised and an adjoining mine is guilty of waste had no application to the circumstances of the present case. That it was not obligatory upon the lessee to have a barrier of coal merely to prevent communication with adjoining mines and the injunction granted by the Court below restraining the defendant from breaking through the existing barrier of coal could not be supported. That the right of instroke is the right of conveying minerals leased to the surface through a pit or shaft in the adjoining mine; it is the converse right to that of outstroke which is the right of conveying minerals from an adjoining mine to the surface through a pit or shaft in the mine leased and a lessee is *primâ facie* entitled to work by instroke, but not by outstroke, and if the lessor desires to deprive the lessee of his right of instroke working, he must do so by clear and unambiguous provision. That in the present case the original lessee had no other land in the neighbourhood and could work the mine only through pits sunk therein and the original parties to the lease did not contemplate the contingency which happened and did not provide for it in the contract. There would consequently be a presumption of right in the lessee to work in the most advantageous way subject to his not committing a fraud on the lessor and no fraud on the part of the lessee having been proved, the injunction to restrain the defendant from working the mine by instroke could not be sustained. That *primâ facie* the owner of the surface has a right of support and the lessee is not entitled to work the mine so as to cause a subsidence. This right to support will be protected by an injunction if the Court is satisfied that injury is imminent and certain to result from the defendant's acts. The Court will also interfere by injunction when the defendant claims the right to do acts which must inevitably cause a subsidence. But in the present case there were no materials to show that the plaintiff had the right to the surface and till such right was established, he could have no right to claim protection against subsidence of the surface. Even assuming that the plaintiff had right in the surface, there was no evidence to show that the pillars need be maintained in the present size and number to prevent subsidence and in view of the statutory rules for the working of mines, it was extremely improbable that the defendant could alter the pillars in such a way as to endanger the surface, and the injunction in this respect was rightly refused. RAMJAS AGARWALLA *v.* BRAJAMOHAN SINGH (1914)

19 C. W. N. 887.

MINERAL RIGHTS.

1. ——— *Moghali Brahmottar —Grant.* Moghali Bahmottar grant of a mauza does not pass the minerals under it to the grantee. *Hari Narayan Singh Deo* v. *Sriram Chakravarti, I. L. R. 37 Calc. 723*, and *Jyoti Prasad Singh* v. *Lachipur Coal Co., I. L. R. 38 Calc. 845*, followed. *Sonet Kooer* v. *Himmut Bahadur, I. L. R. 1 Calc. 391*, distinguished. KUNJA BEHARI SEAL *v.* DURGA PRASAD SINGH (1914) . **I. L. R. 42 Calc. 346**

2. ——— *Mining Rights—Brahmottar grant of entire mauza before Permanent Settlement, effect of, in relation to mining rights.* The effect of a grant of a rent-free brahmottar of the whole of a mauza made before or after the Permanent Settlement is not to transfer any mining rights. *Jyoti Prasad Singh* v. *Lachipur Coal Co., 16 C. W. N. 241*: s. c. *I. L. R. 38 Calc. 845*, and *Kunja Behary Seal* v. *Raja Durga Prosad Singh, 19 C. W. N. 203*, relied on. *Hari Narain Singh Deo* v. *Sriram Chakravarti, L. R. 37 I. A. 136*: s. c. *I. L. R. 37 Calc. 723; 14 C. W. N. 746*, followed. NOWAGHUR COAL CO., LD. *v.* SASHI BHUSAN RAY (1914) . . . . **19 C. W. N. 375**

MINOR.

See CIVIL PROCEDURE CODE (1908). s. 48. **I. L. R. 37 All. 638**

See CIVIL PROCEDURE CODE (1908). O. IX, s. *13* ; O. XXXII, s. 3. **I. L. R. 37 All. 179**

See COMPANY . **I. L. R. 39 Bom. 331**

See GUARDIAN . **I. L. R. 42 Calc. 953**

See GUARDIANS AND WARDS ACT (VIII OF 1890). . **I. L. R. 37 All. 515**

See GUARDIANS AND WARDS ACT (VIII OF 1890), *s.* 25. **I. L. R. 39 Bom. 438**

See MAHOMEDAN LAW—MARRIAGE. **I. L. R. 42 Calc. 351**

See MORTGAGE BY MINOR. **I. L. R. 38 Mad. 1071**

——— fund payable to, if payable to guardian—

See TRUSTEE . **I. L. R. 38 Mad. 71**

1. ——— *Insolvency—Provincial Insolvency Act (III of 1907), ss. 4, cls. (b), (g), 16—Contract Act (IX of 1872), ss. 11, 247, 253, 254.—Infant, adjudication of, as an insolvent—Receiver in Insolvency, powers of—Hindu joint-family—Bankruptcy Act, 1883, (46 & 47 Vict., c. 52), ss. 33, 102—Insolvency of partner—Dissolution of partnership.* In India, as in England, an infant partner of a firm cannot as such be adjudicated an insolvent. *Lovell & Christmas* v. *Gilbert Walter Beauchamp, [1894] A. C. 607,* followed. The creditors of the firm are not entitled to proceed against him personally, being restricted only to his interest in the property of the firm (*vide* s. 247 of the Indian Contract Act). There is no difference in principle between the nature of the liability of an infant admitted by *agreement* in a partnership business and that of another (*e.g.*, a Hindu) on whose behalf an *ancestral* trade is carried on by his guardian. *Joykisto* v. *Nittyanand, I. L. R. 3 Calc. 738, Ram Partab* v. *Foolibai, I. L. R. 20 Bom. 767,* referred to. It is not open to the Court to direct the receiver in insolvency to deal with assets other than those belonging to the persons who have been adjudicated insolvents. *Lovell & Christmas* v. *Gilbert Walter Beauchamp, [1894] A. C. 607,* explained. Whereas in England the bankruptcy of a partner works dissolution of the partnership without an order of the Court, it is not so in India. *Vide* ss. 253, 254 of the Indian Contract Act. A receiver appointed under s. 16 of the Provincial Insolvency Act merely replaces the insolvent partner in respect of the business of the firm. The position of a receiver is the same both with regard to a Hindu joint family partnership assets and acquisitions therefrom. SANYASI CHARAN MANDAL *v.* ASUTOSH GHOSE (1914) **I. L. R. 42 Calc. 225**

2. ——— *Settlement accepted by infant—Transfer of property by husband acting as attorney—Impossibility to restore* status quo, *bar to re-opening settlement—Ratification.* Where by a division of property by independent arbitrators, a

MINOR—*concld.*

share was allotted to an infant who after coming of age sold a valuable property so allotted at a profit, and it appeared that she was throughout acting with her husband who held a power of attorney from her and of whose acts as attorney she had not complained, and who if the infancy had been known would have been appointed her guardian and as guardian would have acted exactly as he had acted as attorney ; and it was only after the greater part of what she had received had been dissipated that she sought to set aside the transaction on the ground of her infancy : *Held,* that though there could be no ratification by an infant, after coming of age, of the invalid power of attorney, as it was impossible for her to restore the property she had received and a general redistribution of the property divided could not possibly be ordered, she could not be allowed to reopen the settlement. *Held,* also, that she was bound by a transaction which was not concealed from her in any way, and formed part of the settlement. CHUAH HOOI GUOH NEOH *v.* KHAW SIM BEE (1915) **19 C. W. N. 787**

MINOR WIDOW.

See GUARDIAN . **I. L. R. 42 Calc. 953**

MINORITY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 48 **I. L. R. 39 Bom. 256**

MISAPPROPRIATION.

See SHEBAIT **I. L. R. 42 Calc. 244**

MISAPPROPRIATION OF GOODS.

——— suit for—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 48, 49 **I. L. R. 38 Mad. 783**

MISJOINDER.

——— *Wrongful confinement on one day, wrongful confinement and assault of the same persons on a subsequent day—Identity of transaction—Unity of object—Criminal Procedure Code (Act V of 1898) s. 239.* Where, in consequence of certain persons having killed a cow on a zamindar's estate contrary to practice and eaten its flesh, they were taken to the *cutcherry* on the 14th December, fined therefor and confined till they had furnished security for the payment of the fine within three days, and on their failure to do so were again taken to the *cutcherry* and detained there, and on information given to the police, one of them was beaten and all ejected :—*Held,* that the illegal confinement on the first day, and the similar confinement and assault on the second day were parts of the same transaction, the object of the accused on both days being the same, *viz.*, to punish the persons for a breach of the rule by extorting the fine, and the assault on the second day being the conclusion of the transaction, and that the joint trial of the accused for offences under s. 347 of the Penal Code committed on the 14th and 18th and for that under s. 352 on the latter date by them was legal. *Emperor* v. *Datto Hanmant Shahapurkar, I. L. R.*

MISJOINDER—*concld.*

30 Bom. 49, and *Emperor* v. *Sherufalli Allibhoy*, *I. L. R. 27 Bom. 135*, approved. *Budhai Sheik* v. *Emperor*, *I. L. R. 33 Calc. 292*, and *Gul Mahomed Sircar* v. *Cheharu Mandal*, *10 C. W. N. 53*, distinguished. DEPUTY LEGAL REMEMBRANCER *v.* KAILASH CHANDRA GHOSE (1914)
I. L. R. 42 Calc. 760

MISJOINDER OF CHARGES.

See CHARGE . I. L. R. 42 Calc. 957

——— *Joint trial for offences under s. 120 B of the Penal Code and ss. 19 (f), 20 of the Arms Act, committed in pursuance of the object of the conspiracy—Identity of transaction—Criminal Procedure Code (Act V of 1898), s. 239—Joint possession of arms—Mere keeping of fire-arms not an offence. "Fire-arms" whether inclusive of parts of the same—Arms Act (XI of 1878) ss. 4, 5, 14, 19(a) (f), 20—Criminal conspiracy, proof of—Punishment when act contemplated not done—Penal Code (Act XLV of 1860), ss. 109, 116, 120B.* A charge of criminal conspiracy to manufacture arms, under s. 120B of the Penal Code read with s. 19(*a*) of the Arms Act (XI of 1878), may be tried jointly with charges of offences under ss. 19 (*f*) and 20 of the latter Act committed in pursuance of the object of the conspiracy. As long as the conspiracy continues the transaction which began with the forming of the common intention continues, and the offences under ss. 19(*f*) and 20 of the Arms Act are committed in the course of the same transaction. *Legal Remembrancer, Bengal* v. *Mon Mohan Roy*, *19 C. W. N. 672*; *21 C. L. J. 195*, followed. Where two persons rented a house and lived in it, and parts of arms were found in one of the rooms:—*Held*, that both being in joint occupation of the house, were in joint possession of the articles so found. The word "fire-arms" in s. 14, read with the meaning of "arms" in s. 4 of the Arms Act, includes parts of fire-arms. "Fire-arms" means only arms fired by gunpowder or other explosives. *Ahmed Hossein* v. *Queen-Empress*, *I. L. R. 27 Calc. 692*, *Emperor* v. *Dhan Singh*, *5 Cr. L. J. 435*; *3 N. L. R. 53*, followed. The offence under ss. 5 and 19 (*a*) of the Arms Act is not a mere keeping of arms, but a keeping of the same for sale. In cases of conspiracy, the agreement between the conspirators cannot generally be directly proved, but only inferred from the established facts of the case. Where two persons took a house in which a considerable number of pieces of fire-arms was found with tools and implements, and work had been actually done to some of the parts of fire-arms, the Court may and ought to infer a conspiracy to manufacture arms. *Per* CURIAM: Where there is only a conspiracy to manufacture arms, without an actual manufacture, the sentence should be imposed under s. 120B of the Penal Code read with s. 19(*a*) of the Arms Act and s. 116 of the Penal Code, and the maximum term of imprisonment awardable under these sections is 9 months' rigorous imprisonment. *Per* BEACHCROFT *J.* The punishment awardable under s. 120B of the Penal Code varies according as the offence has or has not been committed in consequence of the conspiracy. If an offence has been committed, the punishment is that provided by s. 109 of the Penal Code, though, strictly speaking there should not be a conviction in such cases of conspiracy but of abetment. If it has not been committed the punishment is governed by s. 116 of the Penal Code. HARSHA NATH CHATTERJEE *v.* EMPEROR (1914) . I. L. R. 42 Calc. 1153

MISJOINDER OF CHARGES—*concld.*

MISREPRESENTATION.

See CHUKANI RIGHT.
I. L. R. 42 Calc. 28

MISTAKE.

——— in drawing up of a decree—

See CIVIL PROCEDURE CODE (1908), S. 152 . . I. L. R. 37 All. 323

MITAKSHARA.

See HINDU LAW—INHERITANCE.
I. L. R. 37 All. 604

See HINDU LAW—MORTGAGE.
I. L. R. 42 Calc. 1068

See HINDU LAW—PARTITION.
I. L. R. 39 Bom. 373

See HINDU LAW—SUCCESSION.
I. L. R. 37 All. 545

——— Ch. II, s. 5, pl. 4 and 5—

See HINDU LAW—SUCCESSION.
I. L. R. 39 Bom. 87

——— Ch. II, ss. 5, 6—

See HINDU LAW—INHERITANCE.
I. L. R. 42 Calc. 384

——— Ch. II, s. 8, para. 2—

See HINDU LAW—SUCCESSION.
I. L. R. 39 Bom. 168

——— doctrine of, as to right by birth—

See HINDU LAW—PARTITION.
I. L. R. 38 Mad. 556

MOGHALI BRAHMOTTAR.

See MINERAL RIGHTS.
I. L. R. 42 Calc. 346

MORTGAGE.

	COL.
1. INTEREST	324
2. LOST BOND	324
3. MINOR	325
4. PRIORITY	326
5. REDEMPTION	327
6. SALE OF MORTGAGED PROPERTY .	328
7. SUBROGATION	328
8. USUFRUCTUARY MORTGAGE . .	329

See AGRA TENANCY (ACT II OF 1901), S. 20, CL. (2) . I. L. R. 37 All. 278

MORTGAGE—*contd.*

See BHAGDARI AND NARWADARI TENURES ACT (BOM. V of 1862), s. 3.
I. L. R. 39 Bom. 358

See BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876), ss. 30, 35, 39, 40.
I. L. R. 39 Bom. 664

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. II, EXPL. IV, O. II, R. 2.
I. L. R. 39 Bom. 138

See CONSTRUCTION OF DEED.
I. L. R. 39 Bom. 119

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), ss. 13, 15D, 16.
I. L. R. 39 Bom. 73

See EVIDENCE ACT (I OF 1872), s. 92.
I. L. R. 38 Mad. 514

See HINDU LAW—ALIENATION.
I. L. R. 42 Calc. 876

See HINDU LAW—MORTGAGE.
I. L. R. 42 Calc. 1068

See LIMITATION **I. L. R. 42 Calc. 294**

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179.
I. L. R. 39 Bom. 20

See LIMITATION ACT (IX OF 1908), s. 22.
I. L. R. 39 Bom. 729

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 91 AND 120.
I. L. R. 37 All. 640

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 134 . **I. L. R. 37 All. 660**

See MALABAR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900), ss. 3, 5.
I. L. R. 38 Mad. 954

See MORTGAGE BY MINOR.
I. L. R. 38 Mad. 1071

See MORTGAGE DEBT.

See MORTGAGE DEED.

See PALAS OR TURNS OF WORSHIP.
I. L. R. 42 Calc. 455

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 72 . **I. L. R 37 All. 81**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 82 . **I. L. R. 37 All. 101**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 99 . **I. L. R. 37 All. 165**

——— **between Hindus—**

See DAMDUPAT, RULE OF.
I. L. R. 42 Calc. 826

——— **by conditional sale—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 60 AND 98.
I. L. R. 38 Mad. 667

——— **by minor—**

See MORTGAGE.
I. L. R. 38 Mad. 1071

MORTGAGE—*contd.*

——— **by vatandar—**

See HEREDITARY OFFICES ACT (BOM. III OF 1874), s. 5.
I. L. R. 39 Bom. 587

——— **of a promissory note—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 130 AND 134.
I. L. R. 38 Mad. 297

——— **of occupancy holding—**

See NORTH WESTERN PROVINCES RENT ACT (XII OF 1880).
I. L. R. 37 All. 444

——— **of stock-in-trade—**

See CONSTRUCTION OF DOCUMENT.
I. L. R. 37 All. 390

——— **redemption of—**

See CIVIL PROCEDURE CODE (1908), O. XXII, R. 10 **I. L. R. 37 All. 226**

1. INTEREST.

——— *Interest—Loss of part of security by acquisition of mortgaged land—Mortgagee applying to Land-Acquisition Judge for return of mortgage money (out of the compensation money) within term, whether entitled to interest for the whole term—Land Acquisition Act (I of 1894), ss. 18, 30.* If the mortgagee makes a demand for payment within the term, and the mortgagor complies, the mortgagee cannot insist upon payment of interest for the whole of the term. *Letts* v. *Hutchins, L. R. 13 Eq. 176, In re Moss, 31 Ch. D. 90, Smith* v. *Smith, [1891] 3 Ch. 550,* referred to. Where the mortgagee has given notice requiring payment within the term, he cannot withdraw it without the consent of the mortgagor. *Santley* v. *Wilde, [1899] 1 Ch. 747; 2 Ch. 474,* followed. Where the mortgagor agreed to keep the money for one year from 28th September 1912 on condition that the land should remain as security for the loan during the term, but one of the properties given as security had been acquired (the mortgagee probably having no knowledge thereof), and on the 11th October 1912 the mortgagor applied to the Land Acquisition Deputy Collector that the money due under the mortgage (including one full year's interest) might be paid to him out of the compensation money, and the mortgagor consented: *Held,* that as the contract between the parties could not be performed according to its letter by reason of circumstances beyond their control, the mortgagor was not bound to pay interest beyond the period of one month (as admitted by him). *Bakhtawar Begam* v. *Husaini Khanum, I. L. R. 36 All. 195,* explained. PROKASH CHANDRA GHOSE v. HASAN BANU BIBI (1914)
I. L. R. 42 Calc. 1146

2. LOST BOND.

——— *Suit on lost bond—Admission of execution—Plea of payment—How far*

MORTGAGE—*contd.*

2. LOST BOND—*concld.*

question of loss material. In a suit brought on a lost mortgage bond the defendant, a son of the executant, admitted execution but pleaded payment and denied the loss: *Held*, that since the defendant admitted execution, it lay on him to prove that the mortgage had been discharged. The question of the loss of the bond was only material for the purpose of determining whether the bond had been discharged and returned. JHANDU MAL *v.* KARAN SINGH (1915) **I. L. R. 37 All. 426**

3. MINOR.

——————— *Mortgage by minor—Settlement of all property by mortgagor after majority—Fraud of creditors—No fraudulent misrepresentation as to age—Liability to refund—Mortgagee, if a creditor—Transfer by mortgagee—Attestation by mortgagor—Endorsement of payments by mortgagor—Suit against mortgagor and his son—Estoppel of mortgagor—Suit not maintainable against the son—Transfer of Property Act (IV of 1882), s. 53—Subsequent creditors, if included.* The plaintiff sued on a mortgage bond executed by the first defendant during his minority in favour of the third defendant who transferred it to the fourth defendant who again transferred it to the plaintiff. After attaining majority the first defendant executed a settlement transferring all his property to his mother and his wife on behalf of his minor son, the second defendant, stipulating only for maintenance for himself. The first defendant, after attaining majority, had endorsed payments on the mortgage-deed, and attested the transfer of the same by the third defendant to the fourth defendant. It was found by the lower Appellate Court that the settlement was intended to be operative but that it was executed by the first defendant with intent to defeat and delay his creditors. It was also found that there was no fraud or misrepresentation by the minor as to his age when he borrowed on the mortgage. The plaintiff contended that the first defendant was bound to refund the amount advanced on the mortgage to the third defendant, and that he was consequently a creditor entitled to set aside the settlement. The first defendant admitted the plaintiff's claim. The second defendant, who contested the suit, preferred the Second Appeal. *Held*, where a minor has obtained money by misrepresenting his age, that amounts to fraud and he may be made to refund it, but, in the absence of fraud, a refund cannot be ordered. As there was no fraud or misrepresentation by the minor as to his age when he borrowed money on the mortgage, he could not have been ordered to refund, and the third defendant was not one of his creditors at the date of the settlement; consequently the plaintiff was not competent to sue under s. 53 of the Transfer of Property Act to set it aside. The admission of the first defendant during the suit, his endorsement of payments on the mortgage and his attestation of the transfer-deed could

MORTGAGE—*contd.*

3. MINOR—*concld.*

not give the plaintiff the right to set aside the settlement as against the second defendant. *Quære.*—Whether subsequent creditors are included under s. 53 of the Transfer of Property Act. *Per* SADASIVA AYYAR, *J.* A person does not actually become a subsequent or prior creditor by reason of the estoppel of the debtor. An estoppel cannot overrule a plain provision of law. The statutory provision that a minor is incompetent to incur a contractual debt cannot be overruled by an estoppel. VAIKUNTARAMA PILLAI *v.* AUTHIMOOLAM CHETTIAR (1914) **I. L. R. 38 Mad. 1071**

4. PRIORITY.

1. ——————— *Prior and puisne mortgages—Sale to prior mortgagee after creation of a puisne mortgage—Prior mortgage kept alive to to what extent—Prior mortgagee whether entitled to charge interest after date of sale—His claim for necessary repairs and municipal taxes, whether allowable—Practice—Appeal—Transfer of Property Act (IV of 1882), ss. 65, 72 and 101—Madras District Municipalities Act (IV of 1884), s. 103—Doors and windows not moveable property.* When, after the creation of a *puisne* mortgage, the mortgagor sells the property to the prior mortgagee with possession, the prior mortgage is kept alive as against a *puisne* incumbrancer in the circumstances mentioned in s. 101 of the Transfer of Property Act, but not against the owner, whose equity of redemption has been purchased by the prior incumbrancer. The prior mortgagee is not entitled to claim interest on his mortgage after the date of his sale, against the *puisne* mortgagee; the effect of the sale is this: that what was enjoyed by the prior mortgagee till sale, as compensation for the amount of the usufructuary mortgage, he agreed subsequently to enjoy in consideration of the whole price, and he cannot therefore claim any further compensation from the date of sale, for any portion of the price. Where by the terms of the mortgage deed, the mortgagor personally covenanted to pay the municipal taxes himself, the mortgagee who pays the same, cannot add it to the mortgage amount and recover it from the *puisne* mortgagee either under s. 65, clause (c), or under s. 72, Transfer of Property Act, as money spent for preservation of the property as the doors and windows of a house are not moveable property and could not have been seized under s. 103 of the District Municipalities Act before its amendment in 1899. The cost incurred by the prior mortgagee after the sale, for necessary repairs to the property, viz., for restoring a room that had fallen are recoverable, as all rights incidental to the mortgage must subsist with the mortgage right itself, and the prior mortgagee is consequently entitled to add all moneys to the principal amount which he would be entitled to do under s. 72 of the Transfer of Property Act, if the sale had not taken place. There is nothing to prevent the appellant from attacking only a portion of the decree by paying court-fee only

MORTGAGE—*contd.*

4. PRIORITY—*concld.*

thereon, although the reason for the attack might cover the whole decree. SYED IBRAHIM SAHIB *v.* ARUMUGATHAYEE (1912)

I. L. R. 38 Mad. 18

2. ——— *Two mortgages executed by the same mortgagor—Mortgagor becoming by inheritance owner of decree for sale on prior mortgage—Effect of, on rights of puisne mortgagees. Held,* that a mortgagor who had become by inheritance the owner of a decree against himself on a prior mortgage was not entitled to hold up such prior mortgage as a shield against the decree of a subsequent mortgagee from himself. *Otter* v. *Vaux, 6 De G. M. & G. 638, Platt* v. *Mendel, L. R. 27 Ch. D. 246,* and *Baju Chowdhury* v. *Chunni Lal, 11 C. W. N. 284,* referred to. BADAN *v.* MURARI LAL (1915) . . . **I. L. R. 37 All. 309**

5. REDEMPTION.

1. ——— *Equity of Redemption—Extinguishment—Mortgagor passing a rajinama to mortgagee for the land—Mortgagee executing kabuliyat to pay Government assessment.* In 1876, the plaintiff mortgaged the land in dispute to the defendant; and in 1879 passed a *rajinama* relinquishing all his occupancy rights in the said land in favour of the defendants. The latter at the same time gave a complementary *kabuliyat* agreeing to pay Government assessment on the land. The plaintiff having sued to redeem the mortgage. *Held,* dismissing the suit, that the *rajinama* and *kabuliyat* effectually extinguished the plaintiff's equity of redemption. VENKAJI NARAYAN *v.* GOPAL RAMCHANDRA (1914)

I. L. R. 39 Bom. 55

2. ——— *Redemption—Previous decree in mortgagee's favour for possession, if bars redemption suit—Civil Procedure Code (Act XIV of 1882), s. 244—Order in execution of decree in suit for possession directing mortgagee to furnish accounts and permitting redemption, effect of.* Where in a suit by a mortgagee for recovery of possession "by right of *ijara*" of the immoveable properties mortgaged, the Court passed a decree directing *inter alia,* that "the plaintiff do get possession of the same by right of *ijara* and be in possession thereof so long as the money for which the said *mehals* were mortgaged were not repaid out of the income arising therefrom": *Held,* that the decree was clearly a decree for ejectment and a suit by a person interested in the equity of redemption or redemption of the mortgage was not barred by s. 244 of the Civil Procedure Code of 1882. That the fact that since the decree in the ejectment suit, a predecessor-in-interest of the plaintiff had applied in the executing Court asking "that the decree-holder should file accounts showing what moneys had been realised by him since he took possession under the decree, and if the decretal money was not fully paid to let the Court know how much still remains due by rendering a proper account thereof" and the Court overruling the

MORTGAGE—*contd.*

5. REDEMPTION—*concld.*

objection of the mortgagor that the matter could not be dealt with under s. 244, *held,* that the petitioner could redeem the mortgaged properties, but the latter took no steps to do so. *Held,* that this order if binding at all in the suit for redemption was to be regarded merely as interpreting the mortgage and the fact that the plaintiff in his plaint made a prayer that in the taking of accounts the directions contained therein might be followed did not mean that he based his right of redemption on that judgment. The passing of the final decree in a mortgage suit pending an appeal from the preliminary decree is no bar to the hearing of the appeal. PEARY MOHUN MUKERJEE *v.* CHANDRA SEKHAR SARKAR (1915)

19 C. W. N. 1132

6. SALE OF MORTGAGED PROPERTY.

1. ——— *Sale of mortgaged property for any claim of mortgagee unconnected with mortgage—Civil Procedure Code (Act V of 1908), O. XXXIV, r. 14—Transfer of Property Act (IV of 1882), s. 99.* A mortgagee is competent, under the Civil Procedure Code of 1908, to have his mortgaged property sold in satisfaction of any claim which he may have against the mortgagor, though the claim may be unconnected with the mortgage. TARAK NATH ADHIKARI *v.* BHUBANESHWAR MITRA (1914) **I. L. R. 42 Calc. 780**

2. ——— *Suit by second mortgagee—Surplus sale-proceeds taken out by fourth mortgagee in execution of his decree—Third mortgagee if may sue to recover amount realised by fourth mortgagee—Civil Procedure Code (Act V of 1908) s. 73 (1) proviso, cl. (c).* A second mortgagee obtained a decree on his mortgage, in execution of which the property was sold and purchased by the third mortgagee. There was a surplus of sale-proceeds left after satisfying the decree. The fourth mortgagee thereafter sued on his mortgage, without making the third mortgagee a party and in execution of the decree obtained by him withdrew a portion of the surplus sale-proceeds. The third mortgagee thereafter, without seeking to put his mortgage in suit, sued the fourth mortgagee to recover the amount of the surplus sale-proceeds withdrawn by the latter: *Held,* that the plaintiff could not succeed on this footing. *Berhamdeo Pershad* v. *Tara Chand, I. L. R. 33 Calc. 92,* referred to. Cl. (c) of proviso to sub-s. (*1*) of s. 73 of the Civil Procedure Code does not apply to this case as the Plaintiff was not the holder of any decree. NATHAN SAO *v.* ANNIE BESANT (1913)

19 C. W. N. 535

7. SUBROGATION.

——— *Subrogation—Third mortgagee advancing money for discharge of first mortgage—Application of part only towards discharge—Priority over mesne mortgagee to that extent.* A mortgagee who advances money

MORTGAGE—*concld.*

7. SUBROGATION—*concld.*

towards the discharge of a first mortgage on a property is entitled to priority over an intermediate mortgagee to the extent to which the money advanced by him went towards discharging the first mortgage. *Rupabai* v. *Audimulam, I. L. R. 11 Mad. 345*, followed. *Hanumanthaiyan* v. *Meenatchi Naidu, I. L. R. 35 Mad. 183*, referred to. SAMINATHA PILLAI *v.* KRISHNA IYER (1913) I. L. R. 38 Mad. 548

8. USUFRUCTUARY MORTGAGE.

——— *Usufructuary mortgage —Covenant to pay money due on simple mortgage before redemption of the usufructuary mortgage—Suit on simple mortgage barred by limitation—Redemption of usufructuary mortgage.* Plaintiff executed a usufructuary mortgage and later executed a simple mortgage in favour of the defendant. In the latter bond he covenanted not to redeem the usufructuary mortgage till he had paid the money due on the second bond. The present suit was brought to redeem the usufructuary mortgage at a time when if the defendant had to sue on the simple mortgage it would have been barred by limitation. *Held*, that the plaintiff was entitled to redeem the first mortgage without paying money due on the second bond. KESAR KUNWAR *v.* KASHI RAM (1915) . I. L. R. 37 All. 634

MORTGAGE BOND.

See RECEIPT . I. L. R. 42 Calc. 546

MORTGAGE DEBT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 11, 47 I. L. R. 37 Bom. 41

MORTGAGE DECREE.

See INSOLVENCY I. L. R. 42 Calc. 72

MORTGAGE-DEED.

See STAMP ACT (II OF 1899), S. 2 (17), ETC. . . I. L. R. 38 Mad. 646

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 60 AND 98. I. L. R. 38 Mad. 667

——— executed by pardanashin ladies—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . I. L. R. 37 All. 474

MORTGAGE SUIT.

See COMPROMISE I. L. R. 42 Calc. 801

See JURISDICTION I. L. R. 42 Calc. 116

MORTGAGEE.

See MORTGAGE I. L. R. 38 Mad. 548

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 60 AND 98. I. L. R. 38 Mad. 667

——— dispossession of—

See USUFRUCTUARY MORTGAGE. I. L. R. 38 Mad. 903

MORTGAGEE—*concld.*

——— holding two mortgages—

See TRANSFER OF PROPERTY ACT (IV of 1882), SS. 61, 85 AND 99. I. L. R. 38 Mad. 927

——— if a creditor—

See MORTGAGE BY MINOR. I. L. R. 38 Mad. 1071

——— rights of—

See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881). I. L. R. 37 All. 444

MORTGAGEE IN POSSESSION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 60 AND 91. I. L. R. 38 Mad. 310

MORTGAGOR AND MORTGAGEE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 11, 47 I. L. R. 39 Bom. 41

MOSQUE.

See MAHOMEDAN LAW—MUTAWALLI. I. L. R. 38 Mad. 491

MOVEABLE PROPERTY.

See MORTGAGE . I. L. R. 38 Mad. 18

——— wrongful seizure of—

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 29, 62 AND 120. I. L. R. 38 Mad. 972

MUNICIPAL BOARD.

See REGULATION (V OF 1886). SS. 85 AND 141 . . I. L. R. 37 All. 220

MUNICIPAL COUNCIL.

——— *Adverse possession, against—Nature of adverse possession—Right to a pial—Pial over a drain—Right of Municipality to street, drains, etc.—Nature of the right—Right of Government—Adverse possession against Government —Length of possession—Pial, an encroachment or obstruction to drain, street, etc.—Right of municipality to remove encroachment, even when right to site of pial barred—No injunction against Municipal Council—Against right to remove obstruction—The Madras District Municipalities Act (IV of 1884)—Indian Limitation Act (XV of 1877), Art. 146-A—Amending Act (XI of 1900)—Declaration* A person can acquire a title to the site of a pial over a drain in a street vested in a municipality by adverse possession against the municipality for the prescriptive period, which was 12 years before the art. 146-A of the Indian Limitation Act (XV of 1877) was passed in 1900 under Act XI of 1900. The right of a Municipal Council to the street and the drains is not a mere right of easement but is a special right of property in the site previously unknown to law but created by statute. Although it is not open to the municipality to give up the rights of the public by any act of their own, that

MUNICIPAL COUNCIL—*concld.*

would not affect the capacity of a person in adverse possession to acquire rights which would affect the public. The question whether possession has been adverse or not does not depend upon the needs or requirements of the owner but on the character of the occupation of the person in possession. Fugitive or unimportant act of possession would not be sufficiently effective to make the possession adverse. Even if the Municipal Council had no right to the possession of the space above the drain but only a right of user for the discharge of its functions with respect to the drains, still the plaintiff as the person in possession of the pial would have a right to it against all but the true owner which was the Government in this case, but as against the Government the plaintiff had not established a title as he had not been in adverse possession for sixty years. Although the plaintiff had acquired a title to the site of the pial by adverse possession as against the Municipal Council, the right of the latter to the drain under the pial had not been affected, and the Council was entitled to remove the pial as an encroachment or obstruction under s. 168 of the Madras District Municipalities Act. The prayer of the plaintiff for an injunction against the Municipal Council could not therefore be granted, nor could the prayer for declaration of title be granted, as it was only incidental to the substantial relief asked for, namely, an injunction which was refused. *Sundaram Ayyar* v. *The Municipal Council of Madura, I. L. R. 25 Mad. 635*, followed. *Rolls* v. *Vestry of St. George the Martyr, Southwark, 14 Ch. D. 785 at pp. 795* and *796, Municipal Council of Sydney* v. *Young, [1898] A. C. 457*, and *Midland Railway* v. *Wright, [1901] 1 Ch. 738*, referred to. BASAWESWARASWAMI *v.* THE BELLARY MUNICIPAL COUNCIL (1912) . . . **I. L. R. 38 Mad. 6.**

MUNICIPAL COURTS.

———— **jurisdiction of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 86 . **I. L. R. 38 Mad. 635**

MUNICIPAL OFFICER.

———— **dismissal of—**

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS. 2, 46 AND 167.
I. L. R. 39 Bom. 600

MUNICIPAL TAXES.

See MORTGAGE. **I. L. R. 38 Mad. 18**

MUNICIPALITY.

See DISTRICT MUNICIPAL ACT (BOM. III OF 1901), SS. 2, 46, 167.
I. L. R. 39 Bom. 600

———— **adverse possession against—**

See MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884), S. 168.
I. L. R. 38 Mad. 456

MUNIM.

See PAKKI ADAT TRANSACTIONS.
I. L. R. 39 Bom. 1

MUNSIF.

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), S. 35.
I. L. R. 37 All. 450

MUSSALMAN WAKF VALIDATING ACT (VI OF 1913).

———— S. 3—*Construction of Statute—Whether effect restrospective—Wakf—Mahomedan Law.* The Mussalman Wakf Validating Act, 1913, has no retrospective effect and consequently the old law applies to *wakfs* created before the passing of that Act. AMIRBIBI *v.* AZIZABIBI (1914)
I. L. R. 39 Bom. 563

MUTAWALLI.

See CIVIL PROCEDURE CODE (1908), S. 92.
I. L. R. 37 All. 86

See MAHOMEDAN LAW—MUTAWALLI.

MUTT, HEAD OF.

———— *Lease in perpetuity of mutt properties, validity of—Right of successors to dispute, whether void or voidable—Confirmation by immediate successor—Right of the latter's successor to repudiate the same—Suit to set aside, if necessary—Limitation Act (XV of 1877), Arts. 142 and 144—Nature of the estate of a matathipathi (head of a mutt), if an absolute estate or estate for life—Local Boards Act (V of 1884), ss. 63, 66 and 73—The Madras Revenue Recovery Act (II of 1864), ss. 32 and 42—Sale for arrears of road-cess—No notice to inamdar but to tenant—Sale irregular, not without jurisdiction—Suit to set aside sale—Limitation Act (XV of 1877), Art. 12—Revenue Recovery Act (II of 1864), s. 59.* The head of a mutt made an alienation by way of a lease in perpetuity in 1872 of some lands which had been granted as inam for the support of the mutt, and died in 1890; his immediate successor in the office received the rent reserved by the old lease from the lessee's transferees from 1893 and treated the occupants under the old lease as the tenants until his death in 1906; the latter's successor in office brought the present suit in 1908 to set aside the lease and recover possession of the inam lands from the defendants who were sub-lessees or assignees from the original lessee and from the fifth defendant who was a purchaser in a revenue sale of some of the inam lands which were sold in May 1902 for arrears of road-cess due under the Local Boards Act (V of 1884). *Held*, that the suit was not barred by limitation, except as regards the lands which were sold in revenue sale. A permanent lease is in excess of the powers of the head of a mutt. An alienation by the head of a mutt is not necessarily void and of no effect but is good for the life-time of the alienor. A matathipathi (head of a mutt) is not a tenant for life but is in the position of one who, though in a certain sense owner in fee simple, yet in many respects has only the powers of a tenant for life. An alienation by the head of a mutt is voidable by the alienor's successors in very much the same way that an alienation by a Hindu widow in excess

MUTT, HEAD OF—*concld.*

of her powers is voidable by ner successors. The successors of a matathipathi cannot validate a case of his predecessor so as to bind his successors; he validates the lease only for the period during which he holds the office or avoid it altogether. *Abhiram Goswami* v. *Shyama Charan Nandi, I. L. R. 36 Calc. 1003, Narsaya Upada* v. *Venkataramana Bhatta, 23 Mad. L. J. 260, Vidyapurna Tirthaswami* v. *Vidyanidhi Tirthaswami, I. L. R. 27 Mad. 435*, and *Kailasam Pillai* v. *Nataraja Thambiran, I. L. R. 33 Mad. 265*, followed. The corpus of the mutt property is inalienable except in special circumstances, but the income subject to the upkeep of the mutt, is at the absolute disposal of the matathipathi (see *Vidyapurna Tirthaswami* v. *Vidyanidhi Tirthaswami, I. L. R. 27 Mad. 435*). Where owing to the failure of the holders of a portion of the inam lands to pay the local-cess due under the Local Boards Act (V of 1884), the Revenue officers sold some of the inam lands without giving notice of the proceedings to the head of the mutt as the defaulter but notice was given to the tenant in occupation of the lands, the sale was irregular but not one held without jurisdiction, and was consequently liable to be set aside, but the suit to set aside the same was barred as not brought within the time allowed by s. 59 of the Madras Revenue Recovery Act (II of 1864) or Art. 12 of the second Schedule of the Limitation Act (XV of 1877). *Ramachandra* v. *Pitchaikanni, I. L. R. 7 Mad. 434, Chinnasami Mudali* v. *Tirumalai Pillai and the Secretary of State for India, I. L. R. 25 Mad. 572, Malkarjun* v. *Narhari, I. L. R. 25 Bom. 337*, and *Bijoy Gopal Mukerji* v. *Krishna Mahishi Debi I. L. R. 34 Calc. 329*, referred to. *Per* SADASIVA AYYAR, *J.*—The position of a matathipathi is not analogous to that of a Corporation sole under the English Law, because there is this fundamental distinction, namely, whereas the properties belonging to an English Bishop (a Corporation sole under the English Law), including his savings from the revenues of the benefice devolve upon his legal representatives or heirs, the savings of matathipathi devolve upon the succeeding matathipathi. The procedure laid down by the Revenue Recovery Act (II of 1864) has been incorporated into the Local Boards Act by s. 76 of the latter Act; but the substantive provisions in the Revenue Recovery Act (ss. 32 and 33) that the sale for the recovery of arrears of land revenue frees the land from all incumbrances and from all favourably rented leases do not apply to a sale under the Local Boards Act. See *Ramchandra* v. *Pitchaikanni, I. L. R. 7 Mad. 434* and *Chinnasami Mudali* v. *Tirumalai Pillai and the Secretary of State for India, I. L. R. 25 Mad. 572.* MUTHUSAMIER *v.* SREE SREEMETHANITHI SWAMIYAR (1913)
I. L. R. 38 Mad. 356.

N

NAVIGABLE RIVER.

See FISHERY **I. L. R. 42 Calc. 489**

NEGLIGENCE.

See HORSE. **19 C. W. N. 916**

See PENAL CODE (ACT XLV OF 1860), SS. 337, 338. **I. L. R. 39 Bom. 523**

See RAILWAY. **I. L. R. 39 Bom. 191**

——— of agent, damages for—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 6 (*e*).
I. L. R. 38 Mad. 138

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

——— s. 28—*Promissory note by agent, without any indication of execution as agent—Personal liability of executant.* Unless an executant of a promissory note clearly indicates therein either by an addition to his signature or otherwise, that he executes it as agent of another or that he does not intend thereby to incur personal responsibility, he is liable personally on the promissory note according to s. 28 of the Negotiable Instruments Act. Merely describing oneself in the note as. the holder of a power-of-attorney from another does not show that the power included a power to sign promissory notes or that the note was signed in pursuance of the power. Applicability of English Law on the subject considered. KONETI NAICKER *v.* GOPALA AYYAR (1913)
I. L. R. 38 Mad. 482

——— s. 87—

See DEED . **I. L. R. 38 Mad. 746**

NEPAL.

——— whether a "Foreign State"—

See EXTRADITION WARRANT.
I. L. R. 42 Calc. 793

NEW CASE.

See REMAND . **I. L. R. 42 Calc. 888**

NEW TRIAL.

——— application for—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), SS. 9, 38.
I. L. R. 38 Mad. 823

NON-TRANSFERABLE HOLDING.

1. ——— *Question of transferability if arises between vendor and vendee and between vendee and co-sharer landlords.* Plaintiffs who had purchased certain shares in an alleged non-transferable holding partly in execution of a mortgage decree against one tenant and the rest by private alienation from another, having sued for partition, the sons of one of the former opposed the suit on the ground that they had been recognised as tenants of the whole holding by some of the co-sharer landlords, whilst the plaintiffs also were found to have obtained recognition from some of the co-sharer landlords. The District Judge gave the plaintiffs a decree for an interest proportionate to that of the co-sharer landlords who had recognised them. *Held*, that no question

NON-TRANSFERABLE HOLDING—*concld.*

of transferability of the holding arose in the case and the plaintiffs in this suit were entitled to get all the interest they purchased from their vendors. RAJAB ALI *v.* DINA NATH SHAHA (1915) **19 C. W. N. 1305**

2. ——— *Mortgage of—Purchase of holding by co-sharer landlord in execution of decree for his share of rent—Money-decree—Question of transferability, if arises.* In a suit to enforce his mortgage by the mortgagee of an occupancy holding against co-sharer landlords, who since the date of the mortgage purchased the holding in execution of a decree for their share of the rent, the question of transferability does not arise. CHANDI PRASANNO SEN *v.* GOUR CHANDRA DEY (1915) . . . **19 C. W. N. 1307**

NORTH-WESTERN PROVINCES ACTS.

See UNITED PROVINCES AND OUDH ACTS.

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

——— *Mortgage of occupancy holding—Relinquishment—Rights of mortgagee.* An occupancy tenant mortgaged his occupancy holding at a time when the Rent Act of 1880 was in force. In the year 1911, he entered into an agreement with his zamindars to relinquish his rights with the object of defeating the rights of the mortgage: *Held*, that the relinquishment was ineffectual as against the mortgagee. *Jaigopal Narain Singh* v. *Uman Dat, 8 All. L. J. R. 695,* approved. BRIJ KUMAR LAL *v.* SHEO KUMAR MISRA (1915) . . . **I. L. R. 37 All. 444**

NOTICE.

See ARREST OF SHIP.
I. L. R. 42 Calc. 85

See CONSTRUCTIVE NOTICE.

See HUNDI SHAH JOG.
I. L. R. 39 Bom. 513

See INSOLVENCY.
I. L. R. 42 Calc. 72

See LIMITATION ACT (IX OF 1908), s. 28, ART. 47 . **I. L. R. 38 Mad. 432**

See RESUMPTION.
I. L. R. 39 Bom. 279

——— of sale for arears of road-cess—

See MUTT, HEAD OF.
I. L. R. 38 Mad. 356

1. ——— *Appeal—Preliminary objection—Suit for possession of land by several plaintiffs—Decree for joint possession—Failure to serve notice on some of the plaintiffs-respondents—Direction of Court dismissing appeal against them—Effect of such dismissal on the whole appeal.* Where in an appeal by the defendants against a decree for joint possession of land passed in favour of five plaintiffs there was a failure to rerve notices of the appeal on two of the plaintiffs-sespondents and the result was that the Court

NOTICE—*concld.*

directed the appeal to be dismissed in so far as those two plaintiffs were concerned, and the appeal came on for disposal against the remaining plaintiffs-respondents: *Held*, that the appeal could not proceed and it was accordingly dismissed. BASER SHEIKH *v.* FAZLE KARIM BISWAS (1914) **19 C. W. N. 290**

2. ——— *Service of notice by registered post—Post mark, evidentiary value of, in absence of oral evidence as to date of posting and receipt at office of destination—Endorsement by post office returning registered cover as refused by addressee, admissibility of—Presumption if arises from such endorsement as to date of tender to addressee.* That the preponderance of judicial authority is in favour of the view that what purports to be the impression of a post office seal on an envelope which has been posted may be presumed to be genuine, at any rate, when its genuineness is not expressly questioned; that the post mark when proved or assumed to be genuine implies an assertion that the date on the mark is the date of affixing it, that it is evidence that the place or office mentioned therein was actually the place where it was affixed and from the date in the post mark of the office of posting on the cover it might be inferred that the letter was posted at that office on that date and from the date in the post mark of the office of destination it might be inferred that the letter reached that office on that date, but the endorsement on the cover was not admissible in evidence in proof of the allegation that the cover was tendered to and refused by the addressee on the date of the endorsement and in the absence of any evidence on this point and the cover being addressed to the defendant 'at his place of business which there was nothing to show was his residence within the meaning of s. 106, the plaintiff failed to prove that the notice was duly served on the defendant. That proof of the fact that a letter correctly addressed has been posted and has not been received back through the Dead Letter Office may justify the presumption that it had been delivered in due course of mail to the addressee, but proof of the fact that a letter has been duly posted and has been returned by the Postal authorities does not justify the presumption that it has been so returned, because it has been refused by the addressee, much less is there a presumption that the cover has been tendered to the addressee on a particular date. The presumption mentioned in s. 114 of the Evidence Act is not a presumption of law but a presumption of fact and whereas in the present case the defendant pledges his oath that the cover was never tendered to him the Court could not treat the presumption of regularity of official business as conclusive against him. GOBINDA CHANDRA SHAHA *v.* DWARKA NATH PATITA (1914) . . . **19 C. W. N. 489**

NOTICE OF SUIT.

See UNTIED PROVINCES COURT OF WARDS ACT (III OF 1899), s. 48.
I. L. R. 37 All. 13

NOTIFICATION.

——— defect in—

See SALE FOR ARREARS OF REVENUE.
I. L. R. 42 Calc. 397

NUISANCE.

See EASEMENT . I. L. R. 42 Calc. 46

NULLITY OF DECREE.

See DECREE . I. L. R. 39 Bom. 34

O

OATHS ACT (III OF 1873).

——— ss. 5 and 13—*Evidence, admissibility of where witness not sworn.* The evidence of two children aged eight and six years was admitted against an accused person without the children having been sworn or affirmed: *Held*, that in view of s. 13, Indian Oaths Act, the failure to administer oath or affirmation did not render the evidence inadmissible. *Queen-Empress* v. *Viraperumal, I. L. R. 16 Mad. 105* (PARKER, J.), followed. *Queen-Empress* v. *Maru, I. L. R. 10 All. 207*, dissented from. *Per* CURIAM: S. 5 of the Oaths Act is imperative and if a Court holds that a person may lawfully give evidence, it is the duty of the Court to administer oath or affirmation to that witness. *Re* CHINA VENKADU (1913)
I. L. R. 38 Mad. 550

OBSTRUCTION.

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

See PENAL CODE (ACT XLV OF 1860), s. 283 . I. L. R. 38 Mad. 305

OCCUPANCY HOLDING.

See AGRA TENANCY ACT (II OF 1901) s 20, CL. (2) . I. L. R. 37 All. 278

See AGRA TENANCY ACT (II OF 1901), s. 22 . I. L. R. 37 All. 7, 658

See NORTH WESTERN PROVINCES RENT ACT (XII OF 1881).
I. L. R. 37 All. 444

1. ——— *Non-transferable occupancy holding, whether devisable by will—Bengal Tenancy Act (VIII of 1885), ss. 26, 178, sub-s. (3) cl. (d)—Heir, if estopped by testator's act from claiming inheritance under the statute.* A non-transferable occupancy holding cannot be the subject of a valid testamentary disposition. In the case of a testamentary devise of such a holding, the heir-at-law is not debarred by the doctrine of estoppel from questioning its validity. *Hari Das Bairagi* v. *Udoy Chandra Das, 12 C. W. N. 1086*; 8 *C. L. J. 261*, not followed. AMULYA RATAN SIRCAR *v.* TARINI NATH DEY (1914)
I. L. R. 42 Calc. 254

2. ——— *Not transferable by custom or local usage, if can be sold wholly or partially, in execution of decree obtained by co-sharer landlord when raiyat objects to sale.* A co-sharer landlord is not entitled to sell the whole or part of an occupancy holding not transferable by custom or local usage in execution of a decree obtained for his share of rent, when the raiyat objects to the sale. The Full Bench decision in *Dayamoyi Dasi* v. *Annada Mohan Roy, 18 C. W. N. 971*, by implication holds that the raiyat is entitled to have a sale of the holding in execution of a money decree set aside after it takes place and that the holding cannot be sold in execution of such a decree when the raiyat objects to the sale before it takes place. This view is in accord with the cases of *Durga Churn Mondul* v. *Kali Prosanna Sircar I. L. R. 26 Calc. 727 : s. c. 3 C. W. N. 586, Sadagar Sirkar* v. *Krishna Chandra Nath, 3 C. W. N. 742*, and *Sheikh Jarip* v. *Ram Kumar De, 3. C. W. N. 747*. The principle deducible from the Full Bench decision is applicable to an involuntary transfer of the whole as well as of a part of the holding. BADRANNESSA CHOUDHRANI *v.* ALAM GAZI (1915)
19 C. W. N. 814

3. ——— *Revenue Sale Law (Act XI of 1859), s. 37—Occupancy raiyats at fixed rates—Purchaser—Doctrine of Protection—Its extension.* The protection of occupancy raiyats at fixed rates, referred to in s. 37 of the Revenue Sale Law (Act XI of 1859) is not one of the ordinary exceptions in that section. It is a proviso expressing the determination of the Legislature that no purchaser shall disturb any of the permanent tenants on the land who are in actual occupation of the soil and are cultivating it. This doctrine of protection has recently been extended to ordinary occupancy raiyats. *Sarat Chandra Roy* v. *Asiman Bibi, I. L. R. 31 Calc. 725*, referred to. *Bhut Nath Naskar* v. *Surendra Nath Dutt, 13 C. W. N. 1025*, distinguished. ABDUL GANI CHOWDHURY *v.* MAKBUL ALI (1914) I. L. R. 42 Calc. 745

4. ——— *Transferability of part or whole—Consent of landlord—Operation of transfer as against raiyat, landlord and other persons—Civil Procedure Code (Act XIV of 1882), s. 244—Bengal Tenancy Act (VIII of 1885), s. 87.* In transfers, for value, of occupancy holdings, *apart from custom or local usage*: (i) The transfer of the whole or a part is operative against the raiyat,—(*a*) Where it is made voluntarily; (*b*) where it is made involuntarily and the raiyat with knowledge fails or omits to have the sale set aside. A sale is made involuntarily; where it is in execution of a money decree, but not of a decree founded on a mortgage or charge voluntarily made. (ii) The transfer is operative as against the landlord in all cases in which it is operative against the raiyat, provided the landlord has given his previous or subsequent consent. Where the transfer is a sale of the whole holding, the landlord, in the absence of his consent, is ordinarily entitled to enter on the holding; but where the transfer is of a part only of the holding, or not by way of sale, the landlord, though he has not consented, is not ordinarily entitled to recover possession of the holding unless

OCCUPANCY HOLDING—*concld.*

there has been (*a*) an abandonment within the meaning of s. 87 of the Bengal Tenancy Act, or (*b*) a relinquishment of the holding, or (*c*) a repudiation of the tenancy. Whether there has been a relinquishment or repudiation or not depends on the substantial effect of what has been done in each case. (iii) The transfer of the whole or a part is operative as against all other persons where it is operative against the raiyat. DAYAMAYI *v.* ANANDA MOHAN ROY CHOWDHURY (1914).
I. L. R. 42 Calc. 172

5. ——————— *Receipt of rent by landlord from mortgagee of, effect of—Recognition.* Receipt by the landlord of an occupancy holding, with or without protest, of rent deposited by the mortgagee as such is a recognition of the rights of the mortgagee and the landlord cannot evict the mortgagee as a trespasser. MATOOKDHARI SHUKUL *v.* JUGDIP NANAIN SINGH (1914).
19 C. W. N. 1319

OCCUPANCY-RAIYAT.

——————— *Appointed ijaradar, if loses occupancy-right.* The mere fact that a raiyat who has a right of occupancy in his agricultural lands is at the same time a rent-collector of the village and is remunerated as such does not deprive him of his right of occupancy. DURGA PROSAD SINGH *v.* HARI RAM MAHTO (1914).
19 C. W. N. 578

——— at fixed rates—

See OCCUPANCY HOLDING.
I. L. R. 42 Calc. 745

OCCUPANCY RIGHT.

——————— *Mokuraridar cultivating land for more than 12 years—Protection from eviction.* Where a *mokurari* tenure was created in 1890 by an under-tenure-holder in favour of a tenant who went on cultivating the land for 12 years: *Held*, in a suit by a purchaser of the under-tenure under Act VIII of 1865, that the tenant acquired an occupancy-right and retained it even though the *mokurari* right which he had also obtained was extinguished by operation of s. 16 of Act VIII of 1865 and the tenant was not liable to be ejected. *Nilmadhab* v. *Shibu, 13 W. R. 410*, and *Emam Ali* v. *Ator Ali, 22 W. R. 133*, followed. *Jogeshwar Mazumdar* v. *Abed Mahomed Sirkar, 3 C. W. N. 13*, distinugished. BAMA CHARAN GORAI *v.* RAM KANAI DUBEY (1914).
19 C. W. N. 858

OFFICIAL ASSIGNEE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXII, R. 10.
I. L. R. 39 Bom. 568

——— sale by—

See INSOLVENCY.
I. L. R. 42 Calc. 72

OFFICIAL RECEIVER.

——— order of—

See PROVINCIAL INSOLVENCY ACT (III OF 1907) SS. 15 TO 22, 46, 52
I. L. R. 38 Mad. 15

OFFICIAL WITNESS.

——— privilege of—

See CHARGE. **I. L. R. 42 Calc. 957**

OLD WASTE GROUNDS.

——— ejectment from—

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 3 (7), 153 AND 157.
I. L. R. 38 Mad. 163

ONUS OF PROOF.

See BURDEN OF PROOF.

See CHAUKIDARI CHAKRAN LANDS.
I. L. R. 42 Calc. 710

See EVIDENCE ACT (I OF 1872), S. 92, AND PROV. (2) **I. L. R. 39 Bom. 399**

See FRAUD. **I. L. R. 37 All. 537**

See HINDU LAW—MINOR.
I. L. R. 38 Mad. 166

See KASBATIS. **I. L. R. 39 Bom. 625**

ORAL AGREEMENT.

See EVIDENCE ACT (I OF 1872), S. 92, AND PROV. (2).
I. L. R. 39 Bom. 399

ORAL SALE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 4 AND 54.
I. L. R. 38 Mad. 1158

ORDINANCE.

——— 1914—VI.

See COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE.
I. L. R. 42 Calc. 1094

ORIGINAL COURT.

——— competency of, to entertain application—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLV, RR. 15 AND 16.
I. L. R. 38 Mad. 832

ORIGINAL SIDE.

——————— *Decision of Judge of, if binding on another Judge on Original Side.* A Judge on the Original Side of the High Court should follow the decision of another Judge sitting on the same side, but such decision is not binding on the Judges hearing appeals from the Original Side. CHAITRAM RAMBILAS *v.* BRIDHI CHAND KESRI CHAND (1915). **I. L. R. 42 Calc. 1140**
19 C. W. N. 820

ORISSA ZAMINDARI.

——— estates in—

See CHAUKIDARI CHAKRAN LANDS.
I. L. R. 42 Calc. 710

OUTCASTE.

See HINDU LAW—JOINT FAMILY.
I. L. R. 38 Mad. 684

OWNER.

See MADRAS ASSESSMENT OF LAND REVENUE ACT (I OF 1876), s. 2.
I. L. R 38 Mad. 1128

P

PACHETE RAJ.

——————— *Khorposh grant, resumption of—Custom—Grant of putni by Raja after khorposh grant in grantee's lifetime—Death of Raja if entitles putnidar to resume in grantee's lifetime—Option of heir of grantor to resume in grantee's lifetime—Res judicata—Transfers of Property Act (IV of 1882), s. 43.* On the evidence, *held*, that the Plaintiffs had failed to establish that by custom a *khorposh* grant under the Pachete Raj lapses in the grantee's lifetime upon the death of the grantor and the land reverts forthwith to the Raj, but that there was good grounds for the view that a maintenance grant in the Pachete Raj is for the life of the grantee, but is liable to be resumed by the successor of the grantor should the latter die during the lifetime of the grantee. The cases in *Punchum Kumari* v. *Gurunarain Deo, 6 Mac. Sel. Rep. 166, Gurunarain Deo*, v. *Unund Lal Singh, 6 Mac. Sel. Rep. 354*, and *Anand Lal Singh* v. *Gurood Narayan, 5 Moo. I. A. 82*, do not establish the custom as alleged by the plaintiff. Where the grantor of a *khorposh* grant purported to resume the grant in the lifetime of the grantee and then granted a *putni* in respect of the subject matter to another person, and on the grantor's death, the *putnidar* sued to resume the subject-matter of the grant from the grantee: *Held*, that it was not a case where s. 43 of the Transfer of Property Act could apply since the heir of the grantor was still free to exercise his option to resume or not. If a transferor without title has once become entitled to a valid estate in the land, the transferee's equity would attach upon it in the hands of all persons claiming under the transferor otherwise than for a legal interest by purchase for value without notice—the heir inclusive. A suit by the *putnidar* brought in the lifetime of both grantor and grantee for recovery of the property was dismissed, the Court expressing the opinion that the *khorposh* grant was not resumable in the grantee's lifetime: *Held*, that the decision did not bar the *putnidar's* suit to recover possession brought after the donor's death. CHETA BAHIRA SAHEBA *v.* PURNA CHANDRA CHOUDHURI (1914) **19 C. W. N. 1272**

PAKKI ADAT TRANSACTIONS.

——————— *Wager, intention to, not negatived—Pakka adatia, position of qua client—Transactions by Munim—Costs.* The existence of the *pakki adat* relationship does not of itself negative the existence of an understanding between the *adatia* and his constituent that no delivery should be given or taken under forward contracts and that only differences should be recovered. *Qua* the client the *pakka adatia* is a

PAKKI ADAT TRANSACTIONS—*concld.*

principal and not a disinterested middle-man bringing two principals together. The question which has to be decided is what on the evidence was the common intention of the parties with regard to the settlement or completion of the transactions in dispute. A defendant who has successfully pleaded a lawful defence is entitled to his costs. *Burjorji Ruttonji* v. *Bhagwandas Parashram, I. L. R. 38 Bom. 204*, followed. CHHOGMAL-BALKISSONDAS *v.* JAINARAYAN KANAIYALAL (1913).
I. L. R. 39 Bom. 1

PALAS OR TURNS OF WORSHIP.

——————— *Mortgage—Transferability of palas—Custom—Kalighat Temple—Estoppel of mortgagor, even if trustee—Essential attributes of valid custom—Public policy, contravention of—Onus probandi—Civil Procedure Code (Act V of 1908), O. XXXIV—Chattels—Intangible property, foreclosure of mortgage of—Pledge. Per* MOOKERJEE *J.* (BEACHCROFT *J.* reserving opinion.) A mortgagor, even when acting in a public capacity and not for his own benefit, is estopped to deny his title, and cannot set up as a defence for himself against the mortgagee that the property so mortgaged is trust property which he had no right to mortgage. *Doe* v. *Horne, L. R. 3 Q. B. 760; 61 R. R. 397*, followed. This principle is inapplicable where the mortgage is void as contrary to Statute. *Barrow's Case, 14 Ch. D. 432*, followed. Trustees for a public purpose are not, by the nature of their office, protected from the operation of estoppel as against the assignees of the original parties to the deed in question. *Doe* v. *Horne, L. R. 3 Q. B. 760; 61 R. R. 397, Webb v. Herne, L. R. 5 Q. B. 642*, and *Higgs* v. *Assam Tea Co., L. R. 4 Ex. 387*, referred to. [View indicated by BANERJEE *J.* in *Mallika* v. *Ratanmani, 1 C. W. N. 493*, not accepted.] *Per* MOOKERJEE and BEACHCROFT *JJ.* "A custom to be valid must have four essential attributes: (i) it must be immemorial; (ii) it must be reasonable; (iii) it must have continued without interruption since its immemorial origin; and (iv) it must be certain in respect of its nature generally, as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect." *Tyson* v. *Smith 9 Ad. & El. 406*, followed. A custom cannot be enlarged by parity of reasoning. *Arthur* v. *Bokenham, 11 Mod. 148, Pradyote* v. *Gopi Krishna, I. L. R. 37 Calc. 322*, referred to. "A custom originating within time of memory, even though existing in fact, is void at law." *Mayor of London* v. *Cox, L. R. 2 H. L. 239*, followed. Evidence showing exercise of a right in accordance with an alleged custom as far back as living testimony can go, raises the presumption, though only a rebuttable one, as to the immemorial existence of the custom. *Bastard* v. *Smith, 2 Moo. & R. 129, Mercer* v. *Denne, [1904] 2 Ch. 534*, followed. If the existence of the custom has been proved for a long period, the *onus* lies on the person seeking to disprove the custom to demonstrate its impossibility. If a custom be against reason (*i.e.*, artificial and legal reason warranted by authority of law)

PALAS OR TURNS OF WORSHIP—*concld.*

it has no force in law. When a custom is said to be void as being unreasonable, the unreasonable character of the alleged custom conclusively proves that the usage, even though it may have existed from time immemorial, must have resulted from accident or indulgence, and not from any rights conferred in ancient times. *Salisbury* v. *Gladstone, 9 H. L. C. 692,* followed. The period for ascertaining, whether a particular custom is reasonable or not, is the time of its possible inception. *The Tanistry Case, (1608) Davis 29,* followed. In practice, the Kalighat Temple *palas* have been transferred during at least 90 years though in a limited market which those alone can enter who are qualified to become shebait by birth or marriage, the time when this custom originated being unknown. Proof of the existence of a custom need not be carried back by direct evidence to the year 1773 when the Supreme Court was established, or even to 1793 when the first Regulations were passed by the Indian Legislature. The customary right to make a sale, mortgage, gift or lease of a *pala* in favour of persons within a limited circle (the transferee being under precisely the same obligation to the endowment as the transferor himself), is closely associated with and possibly developed out of the heritable, devisable, and partible character of a *pala. Janokee* v. *Gopaul, I. L. R. 2 Calc. 365,* referred to. A custom of this description clearly cannot be characterised on any rational grounds as unreasonable or opposed to public policy. Foreclosure, as a remedy of the mortgagee, is not confined to mortgages of *land*; it is equally applicable to mortgages of *chattels. Harrison* v. *Hart, 1 Comyn. 393,*; *2 Eq. Cas. Abr. 6,* followed. A mortgage of *intangible* property is entitled to foreclose the mortgagor quite as much as a mortgagee of *chattels.* MAHAMAYA DEBI *v.* HARIDAS HALDAR, (1914)

I. L. R. 42 Calc. 455

PALMYRA JUICE.

——— lease of, whether lease of the moveable property—

See REGISTRATION ACT (III OF 1877), S. 17 (*1*) (*c*) AND (*d*).

I. L. R. 38 Mad. 883

PARDANASHIN.

See PRESENTATION OF COMPLAINT.

I. L. R. 42 Calc. 19

——— examination of—

See COMPLAINT. **I. L. R. 42 Calc. 19**

1. ——— *Mortgage by, in favour of her legal adviser—Transaction to be closely scrutinised—Onus—Proof—that deed was explained to executant and she understood it—Relations cognisant of execution—Inference that deed properly explained, if follows—Stipulation in deed to substitute for properties mortgaged partitioned share of estate under partition, if inoperative—Pleader and client relationship if ceases on passing of judgment, when the time for appealing has not expired. T,* a *pardanashin* lady, and *S*, her brother, who had been

PARDANASHIN—*contd.*

parties in a partition suit with members of their family were represented in that suit by one *R*, as their pleader. The suit terminated in their favour; but before the time for appeal had expired, property belonging wholly to *T* was mortgaged in favour of *R* to secure an advance of Rs. 8,000, of which Rs. 4,773 was said to have been cash and the balance went mainly, if not entirely, in the discharge of moneys due from S. A clause was inserted in the bond to the effect that after the partition should have been effected the property awarded to *T* should be substituted for the mortgaged properties, and it was admitted that the effect of this would be to quardruple the amount of property. There were concurrent findings that this clause was not properly explained to the lady, but the Trial Court held it to be of no consequence as the clause was inoperative. The Trial Judge upheld the deed subject to a reduction of the stipulated interest which he held to be unconscionable, being mainly influenced by the consideration that the relatives of the lady must have been aware of the transaction, because her brother was a co-signatory of the deed and two of her relatives were the identifying witnesses, but the brother was personally interested in carrying through the transaction by which he derived advantage at the expense of the lady, and the other relatives generally were taking gross advantage of her unprotected state: *Held,* that this was a case of the legal adviser to a *pardanishin* woman acting the part of money-lender to her and procuring the execution by her of a mortgage-bond to secure its repayment, and it was difficult to conceive a case in which the Court would be entitled, and indeed obliged, to examine the transaction with closer scrutiny or to insist more sternly on the mortgagee supporting the heavy onus of showing that the client was fully aware of the meaning and effect of the deed, and that the transaction was a fair and honest one. That the Trial Judge was in error in holding that in the mortgage-bond, if otherwise valid, the clause which was clear in its language stipulating for the substitution of *T*'s partitioned properties for the property mortgaged would be inoperative. That in the circumstances, the relatives of *T* should in no way have been regarded as the defenders of her interests. MAHABIR PRASAD *v.* TAJ BEGAM (1914) . . . . **19 C. W. N. 162**

2. ——— *Execution of mortgage by—Attestation by witnesses.* A mortgage executed by a *pardanashin* lady was attested by her husband and another witness. The husband actually saw the signature being made and the other witness was outside the screen in the same room with the lady and he knew her voice and heard her say "yes" when the document was explained to her. *Held,* that the document was duly attested in accordance with law. RUKMINI KOERI *v.* NILMONI BANDAPADHYAYA (1915)

19 C. W. N. 1309

3. ——— *Illiterate, document executed by and drawn up under her instruction*

PARDANASHIN—*concld.*

—Document if to be explained—Presumption of knowledge—Registration—Power-of-attorney, scope of. Where a *pardanashin* lady took a loan from another *pardanashin* lady on a mortgage security, had the deed drawn up by her own men under her own instruction and then got it registered through her muktear and husband authorised to act on her behalf by a general power-of-attorney: *Held*, that it was not necessary that the contents of the document should have been explained to her after the draft was made, but knowledge of the contents was to be presumed, specially as the document came from the side of the executant. *Held*, also, that in second appeal, the High Court can make deductions from acts without disturbing the findings of the lower Appellate Court. *Held*, also, that authority to appear in the Registration office implied authority to appear for all purposes authorised by the Registration Act. BHUBAN MOHINI DASI *v.* GAJALAKSHMI DEBI (1915)
19 C. W. N. 1330

PARDON.

See CRIMINAL PROCEDURE CODE, S. 339.
I. L. R. 37 All. 331

See KING'S PREROGATIVE OF PARDON.

1. ——— *Withdrawal by Magistrate not granting the pardon—Omission to state grounds of forfeiture—Necessity of formal withdrawal or declaration of forfeiture—Plea of pardon to be raised at the trial—Trial of issues of forfeiture of pardon and guilt of accused—Criminal Procedure Code (Act V of 1898), ss. 337, 339.* Under the present law no formal withdrawal of pardon nor formal declaration of its forfeiture are required. If the approver be subsequently proceeded against, it is open to him to plead at his trial that the pardon has not, in fact, been forfeited, that is, that he has not violated its conditions. The two questions of forfeiture of pardon and of his guilt of the offence in respect of which he received the same, may be heard and determined together, under the circumstance. *Emperor* v. *Kothia, I. L. R. 30 Bom. 611, Kullan* v. *Emperor, I. L. R. 32 Mad. 173,* and *Emperor* v. *Abani Bhusan Chuckerbutty, I. L. R. 37 Calc. 845,* referred to. EMPEROR *v.* SABAR AKUNJI (1914) **I. L. R. 42 Calc. 756**

2. ——— *Failure of approval to comply with terms of the pardon on examination at the preliminary inquiry—Forfeiture of pardon—Commitment of approver along with other accused—Joint trial of approver and others—Plea of pardon taken in the Sessions Court—Proper procedure thereon—Trial of question of forfeiture as a preliminary issue—Power of Jury to determine the point—Criminal Procedure Code (Act V of 1898), ss. 298 (1) (c), 337.* Where an approver has forfeited his pardon, on his examination at the preliminary enquiry, the Magistrate may put him in the dock, recommence the enquiry and commit him for trial along with the other accused. *Queen-Empress* v. *Natu I. L. R. 27 Calc. 137,* discussed. *Queen-Empress* v. *Brij Narain Man, I. L. R. 20 All. 529. Emperor* v. *Budhan, I.L.R. 29 All. 24, Sultan Khan* v. *King-Emperor, 5 All. L. J. 691,* and *King-Emperor v. Bala I. L. R. 25 Bom. 675,* followed. When an approver has been committed to the Court of Sessions as an accused he may plead his pardon in bar at the trial, and the Judge must first try the issue of forfeiture and take the verdict of the Jury thereon, and then proceed with the trial of accused for the offences charged. *Emperor* v. *Abani Bhushan Chuckerbutty, I. L. R. 37 Calc. 845,* discussed. *Kullan* v. *Emperor, I. L. R. 32 Mad. 173, Alagirisami Naicken* v. *Emperor, I. L. R. 33 Mad. 514, King-Emperor* v. *Bala, I. L. R. 25 Bom. 675, Emperor* v. *Kothia, I. L. R. 30 Bom. 611,* and *Emperor* v. *Kalu, 31 Punj. Rec. 1904,* approved. *Per* BEACHCROFT *J.* Under the old law the pardon remained in force until its withdrawal by the authority granting it, in consequence of the approver failing to observe the conditions of the pardon, but under the present law the result of such failure is that the approver may be put on trial without any formal order of withdrawal or cancellation of the pardon. The plea should be taken at the commencement of the preliminary enquiry and considered by the Magistrate. If he decides against it or it is not taken before him, the approver may raise the plea in the Sessions Court. The Judge ought to try the question of forfeiture as a preliminary issue, on evidence limited to the point and take the verdict of the Jury on it before proceeding to try the general issue of the guilt of the accused. The onus of proof of forfeiture is on the Crown. *Queen-Empress* v. *Manick Chandra Sarkar, I. L. R. 24 Calc. 492,* declared obsolete. Where, however, the Judge tried the question of forfeiture with the Jury after some evidence on the general issue had been recorded:—*Held*, that the irregularity had not prejudiced the approver or the other accused. *Semble*: When the approver deviates from the conditions of his pardon in the Sessions Court, he cannot be removed from the witness box and placed in the dock as an accused. SHASHI RAJBANSHI *v.* EMPEROR (1914)
I. L. R. 42 Calc. 856

PAROL ACCEPTANCE.

See STAMP ACT (II OF 1899), S. 57.
I. L. R. 38 Mad. 349

PART-PAYMENT.

See CHEQUE, PAYMENT BY.
I. L. R. 42 Calc. 1043

PARTIES.

See CIVIL PROCEDURE CODE (1908), S. 92.
I. L. R. 37 All. 296

See CIVIL PROCEDURE CODE (1908), O. I., R. 10. **I. L. R. 37 All. 57**

See CIVIL PROCEDURE CODE (1908) O. XXII, R. 10. **I. L. R. 37 All. 226**

See LIMITATION ACT (IX OF 1908), S. 22.
I. L. R. 39 Bom. 729

See SPECIFIC RELIEF ACT (I OF 1877), S. 42. **I. L. R. 37 All. 185**

PARTIES—*concld.*

——— to appeal—

See CIVIL PROCEDURE CODE (1908), O. XLIII, R. 1. **I. L. R. 37 All. 272**

——— *Civil Procedure Code (Act V of 1908), s. 92, O. I., r. 3—Public Religious Trust—Suit to remove a trustee and to recover possession of trust property in the hands of a third party—Joinder of parties—Alienee of trustee.* Where in a suit under s. 92 of the Civil Procedure Code (Act V of 1908), the second defendant who was the alienee of the trust property, the subject of the suit, contended that the suit should be dismissed as against him on the ground that he was not a necessary party to it:—*Held*, that there is no reason why, having regard to the provisions of O. I., r. 3 of the Civil Procedure Code, the second defendant should not be made a party to the suit nor why, if the decision of the Court is against him, he should not be declared to be a trustee of the trust property and be directed to convey the property. *Budh Singh Dhudhuria* v. *Nibradaran Roy*, 2 *C. L. J. 431*, and *Budree Das Mukim* v. *Choony Lal Johurry*, *I. L. R. 33 Calc. 789*, distinguished. *Compania Sansinena de Carnes Congeladas* v. *Houlder Brothers*, [*1910*] *2 K. B. 354*, referred to. ALI HAFFIZ *v.* ABDUR RAHAMAN (1915) . . . **I. L. R. 42 Calc. 1135**

PARTITION.

See BABUANA GRANT. **I. L. R. 42 Calc. 582**

See COSTS. **I. L. R. 42 Calc. 451**

See EXECUTION OF DECREE. **I. L. R. 37 All. 120**

See HINDU LAW—PARTITION. **I. L. R. 39 Bom. 734**

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 62, 120. **I. L. R. 37 All. 318**

See PRE-EMPTION. **I. L. R. 37 All. 129**

——— by grandsons—

See HINDU LAW—PARTITION. **I. L. R. 39 Bom. 373**

1. ——— *Joint property—Infructuous suit for partition no bar to a second suit for the same purpose.* In the year 1905 the plaintiff brought a suit for partition of a house held in joint tenancy. The suit was compromised, the defendant agreeing to transfer his rights to the plaintiff for a consideration, and was accordingly dismissed. The compromise, however, was not given effect to, and thereafter the plaintiff brought a second suit for partition. *Held*, that as soon as the defendant failed to carry out the compromise, the parties were relegated to their rights as they existed prior to the compromise. The right to bring a suit for partition, unlike other suits, is a continuing right incidental to the ownership of joint property and the second suit was, therefore, not barred. *Nasrat ullah* v. *Mujibullah*, *I. L. R. 13 All. 309*, *Bisheshar Das* v. *Ram Prasad I. L. R. 28 All. 627*, and *Madan Mohan Mondul* v. *Baikanta Nath Mondul*, *10 C. W. N. 839*, followed. *Gulkandi Lal* v. *Manni Lal*, *I. L. R. 23 All. 219*, not followed. MUKERJI *v.* AFZAL BEG. (1914). **I. L. R. 37 All. 155**

PARTITION—*concld.*

2. ——— *Suit for, if lies without including the whole of the joint properties in the suit—Principle for Courts to follow in such cases—Bengal, Agra and Assam Civil Courts Act (XII of 1887), s. 37.* The plaintiffs and the defendants were the joint proprietors of a certain pargana which was partitioned by the Collector. At the time of the partition certain lands which were jungle or submerged were excluded from the partition, and kept joint. The plaintiff brought three suits to have the joint lands partitioned. *Held*, that it cannot be said that the general rule is that a joint owner cannot claim a partition of the joint property without bringing the whole of it under partition. The rule to be applied is much more elastic and what the Court has to consider in cases of this kind under s. 37 of the Bengal, Agra and Assam Civil Courts Act, 1887, is justice, equity and good conscience. HEM CHANDRA CHOWDHURY *v.* HEMANTA KUMARI DEBI (1914) **19 C. W. N. 356**

PARTNERSHIP.

——— dissolution of—

See MINOR. **I. L. R. 42 Calc. 225**

winding-up of—

See APPEAL. **I. L. R. 42 Calc. 914**

1. ——— *Agreement for joint venture in business—Contract Act (IX of 1872), ss. 239, illustration (a), 249, 251, 252—Liability of co-adventurers against whom there is no document of debt binding on its face—Operations of buying and selling natural to a partnership, and for the partnership—Liability of both defendants on hundis drawn separately by each for payment of his own share of goods—Criterion as to transaction being or not being a partnership transaction.* The respondents carrying on business in Mauritius and having separate offices in Bombay made an agreement for one year "for the purpose of doing business in partnership" in brown sugar to be shipped from Mauritius to Hongkong, and there disposed of on commission sale by the appellant, a Bombay merchant with an agency at Hongkong, the profits of the joint venture to be shared by the respondents equally. The shipments were to be made jointly in Mauritius, a half share by each of the respondents, each one drawing hundis against his own half share, and separate account sales of their respective shares to be rendered to them by the appellant who undertook to arrange for the necessary credit if the Banks in Mauritius would not discount the hundis drawn by the respondents; and an endorsement to that effect was made on the agreement and signed by the appellant. The terms of the agreement were carried out and shipments of sugar were made, but in respect of the hundis drawn by each respondent against his half share recourse was not had first

PARTNERSHIP—*contd.*

to the Banks in Mauritius, but the hundis were at once drawn on and accepted by the appellant at Bombay. The shipments resulted in a loss. The first respondent had, when the hundis drawn by him became due, retired them, but the second respondent who had become insolvent, had not retired the hundis of which he was the drawer with the result that the appellant whose name was on the hundis as acceptor had to retire them. In a suit by the appellant against the respondents and the Official Assignee for the money advanced to pay the hundis, the first respondent alone defended it, his defence being that he had paid all the hundis drawn by him, and was not liable for those drawn by the second respondent. *Held* (reversing the decision of the Court of Appeal in India), that the agreement created a "partnership" between the respondents within the definition in s. 239 of the Contract Act (IX of 1872) which governed the case. But it was a partnership of a limited character, and consequently liability to be enforced against one partner, when there was no document of debt which on its face bound him, could only be justified if it was shown that what he did was within the operations natural to the partnership and for the partnership. On the terms of the agreement the purchase of the sugar under it became a purchase for the partnership and anyone who sold the sugar or advanced money by which the sugar was bought was crediting the partnership with goods or money. If either party in the case bought sugar and then re-sold it under the provision in the agreement for re-sale in Mauritius he could not refuse his co-adventurer a share of the profit he made. The joint adventure began not when the goods were shipped, but from the moment the sugar was bought. The appellant too was acquainted with the whole terms and conditions of the agreement, and knew therefore that by advance of credit he was helping the partnership in its purchase of sugar. That credit was not given in the precise way contemplated by the agreement; but that the respondents availed themselves of the appellant's credit appeared on the hundis themselves. When a drawer discounts an acceptance which is given at a time when the acceptor owes no money to the drawer, it is idle to say that the drawer does not avail himself of the acceptor's credit. Moreover, on the evidence of the first respondent himself in cross-examination "the sugar purchased was all paid for by the hundis accepted by the appellant." As to the criterion to be applied to the particular facts of each case in order to see whether the transaction is or is not a partnership transaction, the cases of *Gouthwaite* v. *Duckworth, 12 East 421, 426, Saville* v. *Robertson, 4 T. R. 720,* and *Heap* v. *Dobson, 15 C. B. N. S. 460,* in the English Courts; and *Cunningham* v. *Kinnear, 2 Pat. App. Cas. 114, British Linen Company* v. *Alexander, 15 D. 277,* and *White* v. *McIntyre, 3 D. 334,* in the Scottish Courts; and Bell's Commentaries on the Principles of Mercantile Jurisprudence, s. 395, were referred to. KARMALI ABDULLA *v.* KARIMJI JIWANJI (1914)

I. L. R. 39 Bom. 261

PARTNERSHIP—*contd.*

2. ——— *Dissolution of Partnership—Partition, suit for—Dispute as to whether a mortgage bound one or both partners—Compromise admitting debt to be in part payable by each—Suit by Mortgagee decreed against one partner only—Other partner if relieved from paying his admitted share of debt—Payment of whole debt by other partner—Contribution.* Following on a dissolution of partnership between *L* and *B*. *L* sued *B* for partition, and one of the questions in dispute was whether a mortgage of the partnership property by *B* in favour of *N* was payable by *B* alone or by both partners equally. A decree was passed on compromise by which *L* undertook to pay Rs. 8,200 to the mortgagee and *B* that he should free *L*'s portion of the property from the mortgage. *L* paid only Rs. 200 to *N*, who thereafter to enforce his mortgage brought a suit in which it was eventually decided that the mortgage bound only *B*'s share, and *N* was paid off by sale of *B*'s share. *B*'s representatives then sued *L* for Rs. 8,000. *Held*, that by the compromise *L* admitted that the debt due to *N* was a partnership debt whereof *L* was liable to pay Rs. 8,200, and from that moment Rs. 8,200 became a debt due by *L* to *N* for the purpose of adjustment between the ex-partners; and it was not open to *L*'s representatives to get out of the compromise by which *L* was bound, by saying that if *N*'s suit had been then decided, *L* would have found himself free of the liability without entering into the undertaking to pay Rs. 8,200. *B* having had to pay what *L* should have, to make good the terms of the compromise *L* was bound to pay it to. RAMLAL *v.* NARSING DAS (1914)

19 C. W. N. 193

3. ——— *Business—Suit for contribution by partner for money advanced in satisfaction of debt incurred jointly for partnership purposes, if lies.* The plaintiff and the defendants borrowed money for carrying on a joint business. The creditor obtained a decree against them but executed it against the plaintiff alone and realised the entire amount from him. The plaintiff brought a suit for contribution against each of the defendants for the sum payable by him in respect of the debt. The finding was that the money was borrowed by the plaintiff and the defendants jointly and was applied for the partnership business, that there had been no adjustment of accounts as alleged by the defendants and the plaintiff had not been paid the sum due to him. *Held*, that a suit for contribution was obviously maintainable. That s. 43 of the Contract Act in the absence of a contrary intention appearing from the contract between the parties did not stand in the way of the plaintiff. LABAN SARDAR *v.* CHOYEN MALLIK (1914) . **19 C. W. N. 768**

4. ——— *Partner, suit by, against other partners for damages for use and occupation of partnership property, maintainability of.* G, the owner of a mill, entered into a partnership agreement with two other persons in respect of the mill business. The mill was placed at the

PARTNERSHIP—*concld.*

disposal of and used by the firm thus constituted : cash was to be supplied by one of the partners and the profits were to be distributed in certain proportions. A suit for dissolution of partnership was instituted, and while this was pending the plaintiff purchased the right, title and interest of G in the mill and subsequently sued the members of the partnership firm for recovery of damages for use and occupation of the mill. *Held*, that whether the mill became part of the partnership assets by the deed of partnership, or continued to be the private property of G, the plaintiff's suit was in either case not maintainable. MANIRUDDIN *v.* JNANENDRA NATH BASU (1914)
19 C. W. N. 1115

PASTURE LAND.

See MADRAS ESTATES LAND ACT (I OF 1908), s. 3. **I. L. R. 38 Mad. 738**

PASTURE RENT.

——— recovery of—

See MADRAS ESTATES LAND ACT (I OF 1908), s. 3. **I. L. R. 38 Mad. 738**

PATERNAL AUNT.

See HINDU LAW—GUARDIAN.
I. L. R. 38 Mad. 1125

PATNI LEASE.

See PUTNI.

——— *Chota Nagpur Encumbered Estates Act (Bengal, VI of 1876 as amended by Act V of 1884) s. 17—Rules under s. 19 of Act, Rule 16—Patni lease executed by Deputy Commissioner as manager of Barabhum Estate under the Act—Sanction of Commissioner—Objection that patni lease had not been submitted to Commissioner after he had sanctioned all the details—Sanction granted for lease to a firm and lease given to a Limited Company —Stipulation for payment of Bonus—Payment after time fixed.* The grant of a patni lease under the Chota Nagpur Encumbered Estates Act (Bengal Act VI of 1876 as amended by Act V of 1884) s. 17, and r. 16 of the rules made under the Act, necessitate the sanction of the Commissioner. In a suit to have a patni lease, executed by the Deputy Commissioner as the manager under the Act of the Barabhum Estate on behalf of the proprietor, the father of the plaintiff (appellant) declared void and inoperative as not having received a valid sanction :—*Held*, that where it has been affirmatively established that a transaction itself in all its essential particulars has obtained the sanction of the Commissioner, and then it becomes requisite that the transaction be carried into effect by the preparation of an appropriate deed, an objection merely on the ground that the document ultimately prepared has not been submitted for sanction, cannot be sustained. In administrative and departmental action it must necessarily be the case that formal details may have to be entered upon in order to carry into effect, and put into legal shape the arrangement to which the sanction was given. Where such a sanction was given for a patni lease to be granted to "Robert Watson and Co." a firm of individual men,

PATNI LEASE—*concld.*

and the actual lease was executed in favour of "Robert Watson and Co., Limited," the firm having been converted into a Limited Company :—*Held*, on the facts of the case, that when the negotiators in the course of the correspondence mentioned "Robert Watson and Co.," they did in fact mean and were perfectly understood to mean "Robert Watson and Co., Limited," the fact of the incorporation of the Limited concern being well known, and that therefore the misdescription did not, under the ordinary principle applicable to such matters, affect the validity of the sanction or of the patni lease. In this view it was unnecessary to decide as to the effect in law of the difference in the "*persona*" of the two descriptions. *Held*, also, that the sanction of the Commissioner in this case was not merely a sanction of a proposal to grant a patni. The proposal had been made ; it had been accepted ; a contract was accordingly completed on the subject, and it was that contract so completed that was sanctioned. The patni lease stipulated for the payment of a *salami* or bonus, and the letter granting the sanction contained the clause, "provided the amount be paid before the end of March 1890." Some delay occurred owing to an exchange of views being necessary as to the actual wording of the draft patni, but the lease was finally settled by both parties, and the *salami* was paid on 25th June 1890 :—*Held*, that the lease would not afterwards have been open to a challenge to be made by the Deputy Commissioner himself, or for the Commissioner's sanction to be withdrawn ; and *à fortiori* there was no ground for sustaining such a challenge when put forward long afterwards on behalf of the debtor's successor by whom the suit was brought. RAM KANAI SINGH DEB DARPASHAHA *v.* MATHEWSON, (1915)
I. L. R. 42 Calc. 1029

PATTA.

See MADRAS ESTATES LAND ACT (I OF 1908) SS. 54 AND 78, CL. (2).
I. L. R. 38 Mad. 629

PAYMENT.

——— plea of—

See MORTGAGE. **I. L. R. 37 All. 426**

PEDIGREE.

See EVIDENCE ACT (I OF 1872), S. 32(6).
I. L. R. 37 All. 600

PENAL ASSESSMENT.

——— levy of—

See MADRAS LAND ENCROACHMENT ACT (III OF 1905), SS. 3, 5, 14.
I. L. R. 38 Mad. 674

PENAL CODE (ACT XLV OF 1860).

——— **ss. 40 and 79**—*Madras Forest Act (V of 1882), offence under—Justification, plea of, not available.* The plea of justification provided by s. 79 of the Indian Penal Code (XLV of 1860) is

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s. 40—*concld.*

available only for an offence punishable by the Penal Code and not for offences punishable by any special or local law and hence the belief of the accused that he was justified in his act does not exculpate him from punishment for his guilt under s. 21 of the Madras Forest Act. *Emperor* v. *Kassim Isub, 14 Bom. L. R. 365*, dissented from. *In re Penchul Reddi, 9 Mad. L. T. 216*, followed. *Re* LEWIS (1913) **I. L. R. 38 Mad. 773**

——— s. 75—

See PRACTICE . **I. L. R. 39 Bom. 326**

——— s. 80—*Plea of accident—Onus on accused—Criminal case —Motive for committing offence—Criminal Procedure Code (Act V of 1898), s. 342—Written statement filed by accused—Examination of accused by Court. Per* CHITTY, J. If the accused puts forward a substantive defence of accident within the purview of s. 80, Indian Penal Code, it is incumbent upon him to prove it. Where the evidence as to the deed is sufficiently convincing, it is immaterial to consider with what motive it was done. *Per* BEACHCROFT, J. There is no provision in the Code of Criminal Procedure for the making of a written statement by an accused in the Sessions Court and the practice of refusing to answer questions and of putting in a written statement is a pernicious one. KING-EMPEROR *v.* DWIJENDRA CHANDRA MUKHERJEE (1915) **19 C. W. N. 1043**

——— ss. 82, 83—*Offence of rape committed by a boy under fourteen—Presumption. Held*, that the presumption of English law against the possibility of the commission of the offence of rape by a boy under the age of years 14 has no application to India. EMPEROR *v.* PARAS RAM DUBE (1915) **I. L. R. 37 All. 187**

——— s. 86—*Interpretation of—Drunkenness —Knowledge and intent. Per* AYLING, J. Ordinary drunkenness makes no difference to the knowledge with which a man is credited and if an accused knew what the natural consequences of his act were he must be presumed to have *intended* to cause them. *Per* TYABJI, J.—S. 86, Indian Penal Code, must be construed strictly. It provides that the intoxicated person shall be dealt with as if he had the same *knowledge* as he would have had if he had not been intoxicated, but it does not provide that he shall be dealt with as if he had the same *intent*. *Re* MANDRU GADABA (1914) **I. L. R. 38 Mad. 479**

——— ss. 109, 116, 120B—

See MISJOINDER OF CHARGES.
I. L. R. 42 Calc. 1153

——— ss. 120, 120A, 120B, 121A—

See CHARGE . **I. L. R. 42 Calc. 957**

——— s. 120B—*Conspiracy.* FLETCHER, J.—In cases of conspiracy the agreement between the conspirators cannot generally be directly proved

PENAL CODE (ACT XLV OF 1860)—*contd.*

——— s. 102B—*concld.*

but only inferred from other facts proved in the case. BEACHCROFT, J.—That on a conviction under s. 120B, Indian Penal Code, if an offence has been committed the punishment is provided by s. 109, Indian Penal Code, and if an offence has not been committed the punishment is limited to the extent provided by s. 116. *Semble*: Strictly speaking in cases where an offence has been committed in pursuance of a conspiracy there should not be any conviction for conspiracy but for abetment of the offence; for conspiracy followed by an act done to carry out the purpose of conspiracy amounts to abetment. KHAGENDRA NATH CHAUDHURI *v.* KING-EMPEROR (1914)
19 C. W. N. 706
I. L. R. 42 Calc. 1153

——— s. 182—

See CIVIL PROCEDURE CODE (1908), SS. 68 AND 70, SCH. III.
I. L. R. 37 All. 334

——— s. 185—"*Property*"—*Exclusive right to sell drugs. Held*, that a person who bid at an auction of the right to sell drugs within a certain area under a false name, and when the sale was confirmed in his favour, denied that he had ever made any bids at all, was rightly convicted of an offence under s. 185 of the Indian Penal Code. *Queen* v. *Reazooddeen, 3 W. R. Cr. R. 33*, referred to EMPEROR *v.* BISHAN PRASAD (1914)
I. L. R. 37 All. 128

——— ss. 188, 269—*Epidemic Diseases Act (III of 1897), ss. 2 and 3—Local Government—Delegation of powers to—Regulations under the Act—Rule 104 of the Regulations ultra vires of the Local Government.* A delegation under r. 104 by the Collector to a Divisional Officer of the power to call upon people to evacuate houses is illegal and an omission to comply with the order of such officer acting under such delegated authority is not an illegal omission. *Re* NAGAPPA THEVAN (1913)
I. L. R. 38 Mad. 602

——— s. 225B—

See WARRANT, VALIDITY OF.
I. L. R. 42 Calc. 708

——— s. 283—*Obstruction, causing of—Whether necessary to prove any particular individual obstructed.* Where the evidence showed that an obstruction placed on a road must necessarily prevent vehicles from passing at all and foot-passengers from passing without inconvenience. *Held*, that it is a necessary inference that persons were obstructed and that it is not necessary to expressly prove that any specific individual was actually obstructed. *The Queen* v. *Khader Moidin, I. L. R. 4 Mad. 235*, not followed. *Queen-Empress* v. *Veerappa Chetti, I. L. R. 20 Mad. 433*, commented on. *Re* VENKAPPA (1913)
I. L. R. 38 Mad. 305

——— s. 302—*Criminal Procedure Code (Act V of 1898), ss. 374, 376—Accused charged with murder—Duty of presiding Judge as to arranging*

PENAL CODE (ACT XLV OF 1860)—*contd.*

s. 302—*concld.*

for his defence—Re-trial on the same charge. The accused who was undefended in the Sessions Court was convicted under s. 302, Indian Penal Code. The case came up to the High Court for confirmation of the sentence of death under s. 374, Criminal Procedure Code, and also on appeal. *Held,* that accused persons charged with murder should not go undefended. The respective duties of the Judge and the Bar as to the defence of such accused persons pointed out. The High Court held that on the evidence as it stood the sentence of death could not be confirmed and directed under s. 376, cl. (*b*), a re-trial of the accused on the same charge after arrangement being made for his defence. KING-EMPEROR *v.* MOHAR ALI SHEIKH (1915) . . . **19 C. W. N. 556**

s. 323—

See BAILIFF. . **I. L. R. 42 Calc. 313**

ss. 332, 323—*Public servant in the execution of his duty as such—House search by Excise Inspector without a warrant—Assault on Inspector.* An Excise Inspector in searching the house of a person, under the suspicion that he would find cocaine there, committed many irregularities. He had no warrant authorising him to make the search, he had brought only one search witness and he directed a constable to scale the outer wall of the house. The accused assaulted and beat him. *Held,* that the Inspector and the constables were not acting in the discharge of their duties as public servants and the accused were not guilty of an offence under s. 332 of the Indian Penal Code, but were guilty of an offence punishable under s. 323 of the said Code. *Queen-Empress* v. *Dalip, I. L. R. 18 All. 246,* followed. EMPEROR *v.* MUKHTAR AHMAD (1915) **I. L. R. 37 All. 353**

ss. 337, 338—*Hurt caused by rashness or negligence—Hakim—Performance of eye-operation with ordinary scissors—Neglect of ordinary precautions—Partial loss of eye-sight.* The accused, a Hakim, performed an operation with an ordinary pair of scissors, on the outer side of the upper lid of the complainant's right eye. The operation was needless and performed in a primitive way, the most ordinary precautions being entirely neglected. The wound was sutured with an ordinary thread. The result was that the complainant's eye-sight was permanently damaged to a certain extent. The accused was on these facts convicted of an offence punishable under s. 338 of the Indian Penal Code. He having applied to the High Court:—*Held,* that the accused had acted rashly and negligently so as to endanger human life or the personal safety of others. *Held,* also, that the act of the accused amounted to an offence punishable under s. 337 of the Indian Penal Code, since there was no permanent privation of the sight of either eye in consequence of the operation. Where a Hakim gives out that he is a skilled operator and charges considerable fees, the public are entitled to the ordinary precautions which surgical knowledge regards as imperative. To neglect such precautions entirely is negligence such as is contemplated by the criminal law. EMPEROR *v.* GULAM HYDER PUNJABI (1915) **I. L. R. 39 Bom. 523**

PENAL CODE (ACT XLV OF 1860)—*contd.*

s. 337—*concld.*

ss. 366, 372—*Kidnapping—Buying or selling minor girls for the purpose of prostitution.* A low caste girl left her lawful guardian of her own free will and subsequently met the accused Ewaz Ali and lived with him for some time. Later he made her over to certain persons who, representing that she was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in full belief that such representation was true. *Held,* that Ewaz Ali was neither guilty of an offence under s. 366 of the Indian Penal Code inasmuch as he did not take or entice her away from her legal custody nor of an offence under s. 372 of the said Code. *King-Emperor* v. *Ram Chander, 12 All. L. J. 265, Empress of India* v. *Sri Lal, I. L. R. 2 All. 694,* followed. *King-Emperor* v. *Jetha Nathoo, 6 Bom. L. R. 785,* referred to. EMPEROR *v.* EWAZ ALI (1915) . . **I. L. R. 37 All. 624**

s. 405—*Criminal Procedure Code (Act V of 1898), ss. 179 and 182—Criminal breach of trust—Hundis sent from Dharapuram—Cashed in Bombay—Jurisdiction.* The offence of criminal breach of trust is completed by the misappropriation or the conversion of the property dishonestly. It is only the *intention* which is essential, whether wrongful gain or loss actually results is immaterial; it is a consequence, but no essential part of the offence, and a person is not accused of the offence by reason of it. Where, therefore, the accused, brokers in Bombay, were charged in the Court of the Sub-Divisional Magistrate of Erode with the offence of having committed criminal breach of trust in respect of the proceeds of certain hundis, entrusted to them by the complainants, merchants at Dharapuram, for encashment at Bombay. *Held,* that the hundis having been cashed and the proceeds misappropriated by the accused in Bombay the Erode Court had no jurisdiction to try the case. *Ganeshi Lal* v. *Nand Kishore, I. L. R. 34 All. 487,* approved. *Assistant Sessions Judge of North Arcot* v. *Ramaswami Asari, 26 Mad. L. J. 235,* distinguished. *Queen-Empress* v. *O'Brien, I. L. R. 19 All. 111,* and *Emperor* v. *Mahadeo, I. L. R. 32 All. 397,* commented on. *Held,* also, that, where, as in this case, the complaint clearly charged dishonest misappropriation to accused's own use and not use or disposal in violation of law or contract, the offence fell under the first part of s. 405 of the Indian Penal Code and not under the second. And secondly, if it were otherwise, the offence would be committed where the dishonest use or disposal took place, not where the contract was made, or should have been performed. *Re* RAMBILAS (1914) **I. L. R. 38 Mad. 639**

s. 424—*Conviction of a ryot under Madras Estates Land Act (I of 1908), for dishonest*

PENAL CODE (ACT XLV OF 1860)—*concld.*

——— s. 424—*concld.*

concealment and removal of crops, legality of—Madras Estates Land Act (I of 1908), ss. 73 and 212, no bar to conviction. The accused who was a ryot under the Madras Estates Land Act and who was bound under the conditions of his tenure to share the produce of his land with the land-holder in a certain proportion dishonestly concealed and removed the produce thus preventing the land-holder from taking his due share. *Held*, that the provisions of ss. 73 and 212 of the Madras Estates Land Act were no bar to a conviction of a ryot under s. 424, Indian Penal Code, for the dishonest concealment and removal. *Re* SIVANUPANDIA THEVAN (1914) **I. L. R. 38 Mad. 793**

——— s. 456—*Lurking house trespass—Intent—Burden of proof.* The accused was found inside the complainant's house at 2 A.M., and when arrested made no statement as to his reasons for being there. On being sent up for trial he stated, but could not prove to the satisfaction of the Court, that he had an intimacy with a widow living in the house. *Held*, that the presence of the accused in the house at that hour pointed to a guilty intent and it was for him to rebut that presumption. *Emperor* v. *Ishri, I. L. R. 29 All. 46*, followed. *Emperor* v. *Jangi Singh, I. L. R. 26 All. 194, Sella Muthu Servaigaran and Mottayan* v. *Palla Muthu Karuppan, 21 Mad. L. J. 161, Queen-Empress* v. *Rayapadayachi, I. L. R. 19 Mad. 240*, and *Premanundo Shaha* v. *Brindabun Chung, I. L. R. 22 Calc. 994*, referred to. EMPEROR *v.* MULLA (1915) . . **I. L. R. 37 All. 395**

——— ss. 478, 486—*Trade-mark, meaning of—S. 28—Counterfeiting, what amounts to.* The trade-mark alleged to be counterfeited was that of a company who were the manufacturers of a kind of tooth powder sold in boxes. It appeared that apart from two points of difference the imitation of the whole design was most marked and complete. *Held*, that the expression "trade-mark" as defined in s. 478 must not be confined to the trade-mark of the complainants registered in England, but must include the whole design on the top of the box and the black label pasted round the side. That the case clearly came within the definition of "counterfeit" in s. 28, Indian Penal Code. NILMONEY NAG *v.* DURGA PADA BANERJEE (1915) **19 C. W. N. 957**

——— **Chaps. XII and XVII—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 348.

I. L. R. 38 Mad. 552

PENALTY.

See INTEREST . **I. L. R. 42 Calc. 652, 690**

PENSIONS ACT (XXIII OF 1871).

——— ss. 4, 5, 6—*Suit for a declaration affecting the liability of Government—Jurisdiction of civil Court.* The plaintiff came into Court claiming in effect a declaration that he was entitled to be considered as the assignee of the Government

PENSIONS ACT (XXIII OF 1871)—*concld.*

——— s. 4—*contd.*

revenue payable in respect of certain property as being the reversioner to one Dalpat Rai, who was the last assignee. He produced a certificate purporting to be a certificate under s. 6 of the Pensions Act, 1871, but it was a certificate granted in respect of some former litigation between the plaintiff and a rival claimant to the property. *Held*, that the suit as framed could not be entertained without the production of a certificate in conformity with s. 6 of Act No. XXIII of 1871; that the certificate produced was not in conformity with s. 6 of the said Act, and that in any case it would be impossible to pass a decree in favour of the plaintiff without affecting the liability of Government to pay such grant within the meaning of the section. *The Secretary of State for India* v. *Moment, I. L. R. 40 Calc. 391*, distinguished. SECRETARY OF STATE FOR INDIA *v.* JAWAHIR LAL (1915) **I. L. R. 37 All. 338**

——— s. 6—*Saranjam—Grant of land revenue—Suit to recover—Collector's certificate—Admission of pleader binding on client—Preliminary decree—Appeal—Remand—Civil Procedure Code (Act V of 1908) O. XLI, r. 23.* The grantee of a Saranjam filed a suit for the recovery thereof and at the trial a preliminary issue was raised as to the maintainability of the suit without the certificate provided for by s. 6 of the Pensions Act. The grantee's pleader admitted a certificate was necessary but after several adjournments for the purpose failed to produce a certificate. A decree was thereupon passed on the preliminary issue dismissing the suit. On appeal by the grantee it was contended that he was not bound by the admission of the pleader and it was stated that such evidence could be produced as would render a certificate unnecessary. *Held*, that the grantee was bound by the admission of his pleader and that even if he was not so bound there was no material before the Court to justify a reversal of the decree and therefore a remand under O. XLI, r. 23 of the Civil Procedure Code (Act V of 1908) was impossible. In the absence of evidence to the contrary, the grant of a Saranjam must be presumed to be a grant of land revenue and not of the soil. *Ramchandra* v. *Venkatarao, I. L. R. 6 Bom. 598*, and *Raja Bommadevara Venkata Narasimha Naidu* v. *Raja Bommadevara Bhashya Karlu Naidu, L. R. 29 I. A. 76*, referred to. DATTAJIRAO GHORPADE *v.* NILKANTRAO (1914) **I. L. R. 39 Bom. 352**

PERFORMANCE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.

I. L. R. 38 Mad. 959

PERJURY.

See FRAUD **I. L. R. 38 Mad. 203**

——— *Witness—Deposition not read over to witness in the hearing of accused or his pleader but read by witness himself—Inadmissibility of deposition in subsequent trial for giving false evidence—Proceeding against witness—*

PERJURY—*concld.*

Preliminary inquiry—Omission to record statements of witnesses examined thereat—Order for prosecution not containing assignment of the false statements—Criminal Procedure Code (Act V of 1898), ss. 360 (1), 476—Practice. S. 360 (*1*) of the Criminal Procedure Code requires the evidence of a witness to be read over to him in the hearing of the accused or his pleader, so as to enable the latter to correct any mistakes in it. The reading of the deposition by the witness himself is not a compliance with the section, and renders the record of it inadmissible in a subsequent trial against him under s. 193 of the Penal Code. *Mahendra Nath Misser* v. *Emperor, 12 C. W. N. 845,* and *Jyotish Chandra Mukerjee* v. *Emperor, I. L. R. 36 Calc. 955,* followed. Although s. 476 of the Criminal Procedure Code does not expressly provide for the manner in which the preliminary inquiry thereunder is to be recorded, a summary of the statements of the witnesses examined thereat should be made. An order under the same section, directing the prosecution of a person for giving false evidence, should set out the statements alleged to be false. EMPEROR *v.* JOGENDRA NATH GHOSE (1914) . . . . **I. L. R. 42 Calc. 240**

PERMANENT LEASE.

See HINDU LAW—RELIGIOUS ENDOWMENT **I. L. R. 42 Calc. 536**

PERMANENT SETTLEMENT.

See FISHERY . **I. L. R. 42 Calc. 489**

See MADRAS IRRIGATION CESS ACT (VII OF 1865), S. 1 . **I. L. R. 38 Mad. 997**

PERPETUITIES.

——— rule of, applicable to Hindu Law also—

See PRE-EMPTION. **I. L. R. 38 Mad. 114**

PERSONAL COVENANT.

See LIMITATION . **I. L. R. 42 Calc. 294**

PERSONAL DECREE.

See DECREE-HOLDER. **I. L. R. 38 Mad. 677**

PETITION.

——— for winding up—

See COMPANY . **I. L. R. 39 Bom. 16, 47**

PIAL.

——— over a drain, right to—

See MUNICIPAL COUNCIL. **I. L. R. 38 Mad. 6**

PIECEMEAL TRIAL.

See BAILIFF. . **I. L. R. 42 Calc. 313**

PITRAI CHELA.

See HINDU LAW—SUCCESSION. **I. L. R. 39 Bom. 168**

PLAINT.

See COURT-FEE . **I. L. R. 42 Calc. 370**

——— amendment of—

See U. P. COURT OF WARDS ACT (III OF 1899), S. 48 . . **I. L. R. 37 All. 13**

——— presentation of—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 192 . **I. L. R. 38 Mad. 295**

PLEADER.

——— admission by—

See PENSIONS ACT (XXIII OF 1871), S. 6 . . **I. L. R. 39 Bom. 352**

PLEADINGS.

See ARREST OF SHIP. **I. L. R. 42 Calc. 85**

1. ——— *Change of case—Suit on hatchitta—Suit on account stated—Alteration of suit on account stated to suit on account stated in previous year when account stated found to be forgery.* The plaintiffs sued to recover the principal and interest due on a certain *hatchitta.* The plaintiffs alleged that they were the proprietors of a joint bank, that the father of the defendants used to borrow money on *hatchittas* from their bank, that accounts were adjusted up to 1308 and the father of the defendants signed the *hatchitta* for 1308 on which the suit was brought. The lower Court found this hatchitta to be a forgery, but gave the plaintiffs a decree on the *hatchitta* for 1307: *Held,* that the suit being on an account stated and not on an open account and the account stated, sued on, being found to be a forgery, the suit could not be altered to one on an account stated in a previous year. In any case it ought not to have been done with retrospective effect. BHAIRO PROSAD *v.* GOJADHAR PROSAD SAHU (1914) **19 C. W. N. 170**

2. ——— *Issues not expressly framed, when may and when should not be determined.* Where the parties have gone to trial, knowing what the real question between them was, the evidence has been adduced and discussed and the Court has decided the point as if there was an issue framed on it, the decision will not be set aside in appeal simply on the ground that no issue was framed on the point. Where the failure to frame the issue has led to an unfair trial or miscarriage of justice the case will be remanded for retrial. MOHIUDDIN *v.* PIRTHI CHAND LAL CHOUDHURY (1914) . . **19 C. W. N. 1159**

PLEDGE.

See PALAS OR TURNS OF WORSHIP. **I. L. R. 42 Calc. 455**

POLICE OFFICER.

——— statement made to—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 162. **I. L. R. 39 Bom. 58**

POLICE REPORT.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195.
I. L. R. 38 Mad. 1044

See SURETY . I. L. R. 42 Calc. 706

POSSESSION.

See ACQUIESCENCE.
I. L. R. 37 All. 412

See COURT FEES ACT (VII OF 1870), SS. 7, ETC. I. L. R. 38 Mad. 1184

See LAND REVENUE CODE (BOM. ACT V OF 1879), SS. 65, 66.
I. L. R. 39 Bom. 494

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 4 AND 54.
I. L. R. 38 Mad. 1158

——— by widow—

See HINDU LAW—MAINTENANCE.
I. L. R. 38 Mad. 153

——— length of—

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

recovery of—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . I. L. R. 39 Bom. 472

——— suit for—

See HINDU LAW—GUARDIAN.
I. L. R. 38 Mad. 1125

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 91 . I. L. R. 38 Mad. 321

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 142, 144.
I. L. R. 39 Bom. 335

——— writ of—

See BAILIFF . I. L. R. 42 Calc. 313

——— *Tenants in common—Presumption—Possession of one co-owner the possession of all.* Possession of one co-owner is in law the possession of all the co-owners and nothing short of ouster or something equivalent to ouster will put an end to that possession. Where a co-owner in possession did not deny the title of the other co-owners till shortly before the institution of the suit and never laid claim to more than his share, it was presumed that the co-owner in possession was in possession on his own behalf and as well as on behalf of his co-owner. *Corea* v. *Appuhamy*, [*1912*] *A. C. 230*, followed. *Jafar Husain* v. *Mashuq Ali*, *I. L. R. 14 All. 193*, and *Jogendra Nath Rai* v. *Baladeo Das*, *I. L. R. 35 Calc. 961*, referred to. AHMAD RAZA KHAN *v.* RAM LAL (1914) . . . . I. L. R. 37 All. 203

POSSESSORY SUIT.

See MAMLATDARS' COURTS ACT, BOMBAY (BOM. II OF 1906), S. 23.
I. L. R. 39 Bom. 552

POST OFFICE.

See POST OFFICE ACT (VI OF 1898), SS. 19, 61 AND 70 . I. L. R. 37 All. 289

POST OFFICE ACT (VI OF 1898).

——— SS. 19, 61, 70—*Offence—Cocaine—Transmission of, by post. Held*, that cocaine is not a substance which falls within the purview of s. 19 of the Indian Post Office Act, 1898, and it is not an offence under that Act to transmit the same by post. EMPEROR *v.* ISMAIL KHAN (1915)
I. L. R. 37 All. 289

POWER-OF-ATTORNEY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLV, RR. 15, 16, ETC.
I. L. R. 38 Mad. 832

See COMPLAINT . I. L. R. 42 Calc. 19

——— *Construction of—General power of attorney, what is a—Civil Procedure Code (Act XIV of 1882), s. 37 (a)—Stamp Act (II of 1889), Sch. I, Art. 48—Single transaction, meaning of.* A power of attorney which authorises a person to do all things and take all steps necessary to complete the execution of a decree is a general power of attorney within the meaning of s. 37 (*a*) of the Civil Procedure Code (Act XIV of 1882). *Semble*: The expression "a single transaction," in the Stamp act (II of 1889), Sch. I, Art. 48, applies to a single act or acts so related to each other as to form one judicial transaction. VENKATARAMANA IYER *v.* NARASINGA RAO (1914)
I. L. R. 38 Mad. 134

PRACTICE.

See ACQUITTAL . I. L. R. 42 Calc. 612

See APPEAL . I. L. R. 42 Calc. 433

See APPEAL—CRIMINAL CASE.
I. L. R. 42 Calc. 374

See BAILIFF . I. L. R. 42 Calc. 313

See CIVIL PROCEDURE CODE (1908), S. 109 (*c*) . . I. L. R. 37 All. 124

See CIVIL PROCEDURE CODE (1908), O. XXII, R. 10 . I. L. R. 39 Bom. 568

See CONTEMPT OF COURT.
I. L. R. 42 Calc. 1169

See CRIMINAL PROCEDURE CODE, S. 206.
I. L. R. 37 All. 355

See CRIMINAL PROCEDURE CODE, S. 537.
I. L. R. 37 All. 110

See CROSS-EXAMINATION.
I. L. R. 42 Calc. 957

See DECREE . I. L. R. 39 Bom. 80

See EVIDENCE . I. L. R. 42 Calc. 784

See INSOLVENCY . I. L. R. 42 Calc. 109

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 42 Calc. 351

See MORTGAGE . I. L. R. 38 Mad. 18

See PERJURY . I. L. R. 42 Calc. 240

PRACTICE—*concld.*

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), SS. 9 AND 38.
I. L. R. 38 Mad. 823

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 15 TO 22, 46, 52.
I. L. R. 38 Mad. 15

See PUBLIC PROSECUTOR, DUTY OF.
I. L. R. 42 Calc. 422

See WRITTEN STATEMENT.
I. L. R. 42 Calc. 957

1. ——————— *Previous conviction—Relevancy of previous conviction for the purpose of determining extent of sentence—Indian Penal Code (Act XLV of 1860), s. 75—Indian Evidence Act (I of 1872), ss. 54, 165.* The proof of a previous conviction not contemplated by s. 75 of the Indian Penal Code may be adduced after the accused is found guilty, as an element to be taken into consideration in awarding punishment. *Per* SHAH, *J.*—The proof a previous conviction not contemplated by s. 75 of the Indian Penal Code may be adduced provided the previous conviction is relevant under the Indian Evidence Act. The whole question, therefore, is whether the previous conviction in question is relevant under the Act. It is certainly relevant with reference to the question whether the provisions of s. 562 of the Code of Criminal Procedure would apply to this case, and it seems to me to be otherwise relevant on the question of punishment. EMPEROR *v.* ISMAIL ALI BHAI (1914)
I. L. R. 39 Bom. 326

2. ——————— *Reference—Assessment of damages.* A reference should be directed by the Court to assess damages only when the enquiry would involve questions of detail which it would be wasting the time of the Court to investigate. *Wallis* v. *Sayers, 6 T. L. R. 356*, referred to. D. N. GHOSE & BROS. *v.* POPAT NARAIN BROS. (1915) . **I. L. R. 42 Calc. 819**

PRE-EMPTION.

	COL.
1. CONTRACT OF	363
2. CUSTOM	364
3. RIGHT OF PRE-EMPTION . .	364
4. WAJIB-UL-ARZ	365

See BUNDELKHAND ALIENATION ACT (II OF 1903), S. 3 . **I. L. R. 37 All. 662**

See MAHOMEDAN LAW—PRE-EMPTION.

——————— right of—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 120. . **I. L. R. 38 Mad. 67**

1. CONTRACT OF.

——————— *Promisor, heirs of, not enforceable against—Perpetuities, rule of, applicable to Hindu law also.* A contract of pre-emption (with reference to sale of lands), which fixes no time within which the agreement to convey is to be performed cannot be enforced against the heirs of the person who entered into the contract as it infringes the rule against perpetuities. The rule of perpetuities is applicable to Hindus also. *Nobin Chandra Soot* v. *Nabab Ali Sarkar, 5 C. W. N. 343*, followed. KOLATHU AYYAR *v.* RANGA VADHYAR (1912) **I. L. R. 38 Mad. 114**

PRE-EMPTION—*contd.*

1. CONTRACT OF—*concld.*

2. CUSTOM.

1. *Custom—Vendor bound to offer to co-sharers—Refusal to purchase—Refusal to give more than a fixed price.* The custom in pursuance of which a right of pre-emption was claimed being that the vendor was bound to offer the property for sale to his co-sharer and only in case of their refusal he could sell to a stranger, the vendor offered the property in dispute to the pre-emptor, who offered only Rs. 160 for it *and refused to give more.* The vendor thereupon sold it for Rs. 235 to the defendants. *Held,* that the conduct of the plaintiff amounted to a refusal to purchase the property and the vendor was not obliged to give him the option of taking up the contract which he subsequently made for Rs. 235. *Kanhai Lal* v. *Kalka Prasad, I. L. R. 27 All. 670*, distinguished. INDRAJ *v.* BROTHER CLEMENT, MISSIONARY (1915) **I. L. R. 37 All. 262**

2. ——————— *Wajib-ul-arz—Evidence—Custom—Finding of fact—Second appeal.* In a suit for pre-emption brought on the basis of custom if the Court considers the proper issue in the case namely whether the custom alleged does or does not exist, and on the evidence comes to the conclusion that it does not exist, the finding is one of fact and is binding on the High Court in second appeal. BARU MAL *v.* TANSUKH RAI (1915) **I. L. R. 37 All. 524**

3. RIGHT OF PRE-EMPTION.

1. ——————— *Right of pre-emptor to put vendor to proof of title—Suit must be for entire property sold. Held,* that a pre-emptor is not entitled in a pre-emption suit to put the vendor on proof of his title to the property which he purports to sell. The principle of pre-emption is substitution. A pre-emptor is therefore bound to take the title which the vendee was ready to take. Further, that a pre-emptor cannot sue to pre-empt only a portion of the property sold. SABODRA BIBI *v.* BAGESHWARI SINGH (1915)
I. L. R. 37 All. 529

2. ——————— *Right of pre-emption—Effect of perfect partition on right of pre-emption—No fresh wajib-ul-arz prepared at or after partition—Right of a sharer in new mahal after partition to pre-empt property in another new mahal in which he was not a sharer at date of sale—Value of wajib-ul-arz as evidence—Primâ facie evidence of custom of pre-emption without proof of instances of custom being enforced.* In this appeal, which was one arising out of a suit by the appellant, one

PRE-EMPTION—*contd.*

3. RIGHT OF PRE-EMPTION—*concld.*

of the co-sharers in a mauza, for pre-emption after there had been a partition of the mauza in which the land sold was situated, and no fresh wajib-ul-arz had been prepared after the partition had taken place, their Lordships of the Judicial Committee (affirming the decision of the High Court) were of opinion that the clauses relating to pre-emption contained in wajib-ul-arzes of 1863 and 1870 proved that prior to the partition the right of pre-emption had existed in the mauza, but that the appellant had not shown either on the construction of the wajib-ul-arzes, or by other evidence, that the custom of pre-emption which obtained in the unpartitioned mauza survived the partition, so as to give the appellant, a sharer in one of the new mahals, a right to pre-empt property in another of those mahals in which he was not a sharer at the date of the sale. Their Lordships did not dissent from the view expressed by BANERJI, J. in the full bench case of *Dalganjan Singh* v. *Kalka Singh, I. L. R. 22 All. 1*, that "where a fresh wajib-ul-arz has not been prepared at partition, it does not follow as a matter of law or principle that the custom of contract in force before partition is no longer to have effect or operation," and were of opinion that the question must depend upon the circumstances of each case and the inferences which may legitimately be drawn from the evidence. A wajib-ul-arz is by itself good *primâ facie* evidence of a custom of pre-emption stated in it without corroboration by evidence of instances in which the custom has been enforced. The evidence as to a custom of pre-emption afforded by a wajib-ul-arz may of course be rebutted by other evidence. DIGAMBAR SINGH *v.* AHMED SYED KHAN (1914)
I. L. R. 37 All. 129

4. WAJIB-UL-ARZ.

1. ——— *Wajib-ul-arz—Incidents of custom not recorded—Mahomedan Law.* A suit for pre-emption was brought both under the custom recorded in the wajib-ul-arz and Mahomedan Law; but the incidents of the custom were not recorded in the wajib-ul-arz. *Held*, that the rights were co-extensive. *Jagdam Sahai* v. *Mahabir Sahai, I. L. R. 28 All. 60*, followed. ZAMIR AHMAD *v.* ABDUL RAZAQ (1915)
I. L. R. 37 All. 472

2. ——— *Wajib-ul-arz—Partition of village—Right of co-sharers in different mahals to pre-empt inter se.* A certain village prior to 1873 consisted of one mahal which was sub-divided into two pattis. The wajib-ul-arz of that year recorded a custom of pre-emption, first, with near relations, then with co-sharers in the patti and lastly with co-sharers in the village. Subsequently the village was divided into a number of different mahals, and at the last settlement a new wajib-ul-arz was drawn up for each of the new mahals in similar terms. The plaintiff, a proprietor in the village, though not a co-sharer

PRE-EMPTION—*concld.*

4. WAJIB-UL-ARZ—*concld.*

in the mahal, brought a suit for pre-emption. *Held*, that the plaintiff was no longer a co-sharer with the vendor and therefore had no preferential right as against the vendor, who was grove-holder in the village. KHAYALI RAM *v.* KALI CHARAN (1915) . . . . **I. L. R. 37 All. 573**

PRE-EMPTOR.

——— right of, to put vendor to proof of title—

See PRE-EMPTION **I. L. R. 37 All. 529**

PREFERENTIAL HEIR.

See HINDU LAW—SUCCESSION.
I. L. R. 38 Mad. 45

PRELIMINARY DECREE.

See APPEAL . **I. L. R. 42 Calc. 914**

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 2, 97.
I. L. R. 39 Bom. 422

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 97 . **I. L. R. 39 Bom. 339**

See PENSIONS ACT (XXIII OF 1871), S. 6 . . **I. L. R. 39 Bom 352**

——— *Finding that a suit is not res judicata.* A decision that a matter is not *res judicata* is not a preliminary decree. *Chanmalswami* v. *Gangadharappa, I. L. R. 39 Bom. 339*, followed. BHARMA BIN SHIDAPPA *v.* BHAMAGAVDA (1914) . . . **I. L. R. 39 Bom. 421**

PRELIMINARY INQUIRY.

See PERJURY . **I. L. R. 42 Calc. 240**

PRELIMINARY MORTGAGE-DECREE.

See LIMITATION . **I. L. R. 42 Calc. 776**

PRESCRIPTION.

See EASEMENT . **I. L. R. 42 Calc. 164**

PRESENTATION.

See COMPLAINT . **I. L. R. 42 Calc. 19**

PRESIDENCY MAGISTRATES.

See PIECEMEAL TRIAL.
I. L. R. 42 Calc. 313

PRESIDENCY SMALL CAUSE COURT RULES.

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), SS. 9 AND 38.
I. L. R. 38 Mad. 823

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882).

——— **ss. 9 and 38**—*New trial, application for—Right of a party to apply—Presidency Small Cause Court Rules, O. XLI, r. 2, ultra vires—High Court, power of, to make rules—Matters of practice or procedure—Right of a party to apply, not a matter*

PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882)—*concld.*

——— s. 9—*concld.*

of practice or procedure. The rules of the Presidency Small Cause Court are made by the High Court under the powers conferred by s. 9 of the Presidency Small Cause Courts Act of 1882, as amended by the Act of 1895. That section only empowers the High Court to make rules with reference to matters of practice or procedure and not matters of substantive right. On a true construction of s. 38 of the Act, the power given to the Court is really a right given to a party to apply for a new trial: such right like the right of appeal is not a matter of practice or procedure. O. XLI, r. 2 of the Presidency Small Cause Court Rules which requires at the time of presenting an application for new trial, either the deposit in Court of the decree amount or the giving of security for the due performance of the decree is inconsistent with the statutory right given by s. 38 of the Presidency Small Cause Courts Act and is *ultra vires*. *Attorney-General* v. *Sillen, 11 E. R. 1200*; *s.c. 10 H. L. C. 704*, referred to. *Colonial Sugar Refining Company* v. *Irving*, [*1905*] *A. C. 369*, referred to. MADURAI PILLAI *v.* MUTHU CHETTY (1914)
I. L. R. 38 Mad. 823

——— ss. 43, 48—

See BAILIFF . **I. L. R. 42 Calc. 313**

——— s. 69—*Limitation Act (IX of 1908), s. 20, proviso—Part-payment of principal—Literate debtor—Part-payment signed, but not written by him, whether sufficient compliance within the proviso.* When two or more Judges of the Small Cause Court are sitting together for the purpose of exercising the jurisdiction conferred by s. 38 of the Presidency Small Cause Courts Act (XV of 1882), they are sitting "in a suit" within the meaning of those words in s. 69, and if a reference is made to the High Court under its provisions, such reference is valid. S. 20 of the Limitation Act requires that in the case of a part-payment of the principal of a debt, the entry recording the payment should be written by the person who makes the payment, when such person knows how to write; his mere signature to the entry written by another is not a sufficient compliance with the section. *Joshi Bhai shankar* v. *Bai Parvati, I. L. R. 26 Bom. 246, Jamna* v. *Jaga Bhana, I. L. R. 28 Bom. 262*, and *Mukhi Haji Rahmuttulla* v. *Coverji Bhuja, I. L. R. 23 Calc. 546*, followed. *Sesha* v. *Seshaya, I. L. R. 7 Mad. 55*, and *Ellappa* v. *Annamalai, I. L. R. 7 Mad. 76*, distinguished. LODD GOVINDOSS KRISHNADOSS *v.* RUKMANI BAI (1913)
I. L. R. 38 Mad. 438

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).

——— s. 36 (*4*), (*5*)—

See INSOLVENCY. **I. L. R. 42 Calc. 109**

——— s. 90—*Civil Procedure Code (Act V of 1908), s. 24—Transfer of petition for insolvency to mufassil District Court for disposal—No jurisdiction.* As the jurisdictions conferred by the

PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909)—*concld.*

——— s. 90—*concld.*

Presidency Towns Insolvency Act on the High Court, and by the Provincial Insolvency Act on the mufassal courts are distinct, and the provisions of the two Acts differ in such important respects, it is not competent for the High Court to transfer under s. 90 of the Presidency Towns Insolvency Act and under s. 24, Civil Procedure Code, an Insolvency petition pending before it, under the Presidency Towns Insolvency Act for disposal by a mufassal District Court, under the Provincial Insolvency Act. SRINIVASA AYYANGAR *v.* THE OFFICIAL ASSIGNEE OF MADRAS (1913)
I. L. R. 38 Mad. 472

PRESS ACT (I OF 1910).

——— s. 4 (*1*)—

See FORFEITURE . **I. L. R. 42 Calc. 730**

PRESUMPTION.

See ACQUIESCENCE.
I. L. R. 37 All. 412

See MADRAS REGULATION XXV OF 1802, S. 4. . **I. L. R. 38 Mad. 620**

See PENAL CODE (Act XLV OF 1860), SS. 32 AND 83 . **I. L. R. 37 All. 187**

See POSSESSION . **I. L. R. 37 All. 203**

PREVIOUS ACQUITTAL.

See CRIMINAL PROCEDURE CODE, S. 403.
I. L. R. 37 All. 107

PREVIOUS CONVICTION.

See PRACTICE . **I. L. R. 39 Bom. 326**

PRICE.

——— oral agreement as to—

See EVIDENCE ACT (I OF 1872), S. 92.
I. L. R. 38 Mad. 514

PRIMOGENITURE.

See HINDU LAW—INHERITANCE.
I. L. R. 42 Calc. 1179

PRINCIPAL.

——— part-payment of—

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), S. 69.
I. L. R. 38 Mad. 438

PRINCIPAL AND AGENT.

See SALE OF GOODS.
I. L. R. 42 Calc. 1050

1. ——— ——— *Lease by agent—Apparent authority—Ratification—Knowledge of principal if necessary for ratification.* Every act done by an agent in the course of his employment on behalf of his principal and within the apparent scope of his authority binds the principal, unless agent is in fact unauthorised to do the particular act and the person dealing with him has notice

PRINCIPAL AND AGENT—*concld.*

that in doing so he is exceeding his authority. The grantees in this case were entitled to presume that the agent who had admittedly authority to grant reclamation leases had acted with regularity and within the scope of his authority. Where ratification is established as to a part, it operates as a confirmation of the whole of that particular transaction by the agent. Before the principal can be held bound by ratification he must be proved to have had full knowledge or at any rate means of knowledge of all the essential facts of the transaction into which his agent had entered on his behalf. KATYAYANI DEBI *v.* PORT CANNING AND LAND IMPROVEMENT CO. (1914) **19 C. W. N. 56**

2. ——— *Obligation of agent not only to submit accounts but to explain account papers.* The obligation of an agent towards his principal does not terminate merely by submission of account papers. He is bound to explain those papers and if on accounts taken it is found that he has in his hands money which belongs to his principal he is bound to pay that sum. MADHUSUDDAN SEN *v.* RAKHAL CHANDRA DAS BASAK (1915) . . **19 C. W. N. 1070**

PRINCIPAL AND SURETY.

See CONTRACT ACT (IX OF 1872), SS. 134, 137 . . **I. L. R. 39 Bom. 52**

PRIOR AND PUISNE MORTGAGES.

See MORTGAGE . **I. L. R. 38 Mad. 18**

PRIOR MORTGAGEE.

See MORTGAGE . **I. L. R. 38 Mad. 18**

PRIORITY.

See CO-OPERATIVE SOCIETY.
I. L. R. 42 Calc. 377

PRIVATE AWARD.

See ARBITRATION . **19 C. W. N. 948**

PRIVITY OF CONTRACT.

See CONTRACT . **I. L. R. 37 All. 115**

PRIVY COUNCIL.

See APPEAL TO PRIVY COUNCIL.

See LEAVE TO APPEAL TO PRIVY COUNCIL.

See PRIVY COUNCIL, PRACTICE OF.

See CIVIL PROCEDURE CODE (1908), O. XLV, R. 15 . **I. L. R. 37 All. 567**

——— **decision of—**

See BILL OF LADING.
I. L. R. 38 Mad. 941

——— **order of, transmitted to the original Court.**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLV, RR. 15 AND 16.
I. L. R. 38 Mad. 832

PRIVY COUNCIL, APPEAL TO.

See APPEAL TO PRIVY COUNCIL.

PRIVY COUNCIL, PRACTICE OF.

——— *Special leave to appeal in Criminal case, application for—Petitioners sentenced to death—Stay of execution of sentences pending hearing of petition, refusal of—Tendering advice as to exercise of King's Prerogative of Pardon.* On an application for special leave to appeal in a case in which the petitioners had been sentenced to death, their Lordships of the Judicial Committee, not being a Court of Criminal Appeal, declined to interfere with regard to staying execution of the sentences pending the hearing, or to express any opinion as to whether they ought to be suspended. The tendering of advice to His Majesty as to the exercise of His Prerogative of pardon is a matter for the Executive Government, and is outside their Lordships' province. BALMUKUND *v.* KING-EMPEROR (1915) **I. L. R. 42 Calc. 729**

PRIZE.

See CONFISCATION.
I. L. R. 42 Calc. 334

PROBATE.

See GUARDIAN . **I. L. R. 42 Calc. 953**

——— **as evidence of right—**

See SUCCESSION ACT (X OF 1865), S. 187.
I. L. R. 38 Mad. 988

——— **conditional order for grant of—**

See SUCCESSION ACT (X OF 1865), S. 187.
I. L. R. 38 Mad. 988

1. ——— ——— *Joint Hindu family—Ancestral property—Will—Payment of full probate duty.* In a case where there was admittedly a joint Hindu family consisting of a father and a minor son, the father made a will in effect bequeathing the whole property to his minor son. It was not disputed that the property covered by the will was joint family property. The executors contended that the deceased testator had no beneficial interest in any part of the property devised, and therefore they were exempted from the payment of any probate duty. *Held*, that where the matter in question was probate, the parties claiming under the will could not go behind its terms, or claim any exemption whatsoever upon allegations utterly inconsistent not only with the fact of the will itself, but with the express statements made therein and that the executors must pay full probate duty upon the will. *Collector of Kaira* v. *Chunilal, I. L. R. 29 Bom. 161*, distinguished. KASHINATH PARSHARAM *v.* GOURAVABAI (1914) . **I. L. R. 39 Bom. 245**

2. ——— *Revocation—Will, validity of—Proof in common form—Knowledge—Acquiescence—Delay—Probate and Administration Act (V of 1881), s. 50.* It does not matter by what facts knowledge of the grant of probate and acquiescence in it are established, for neither knowledge, nor acquiescence, nor lapse of time are of themselves operative as a bar to the proceeding which every person interested in the estate of the testator has a right to bring, if he was not made a party in the probate proceeding. His

PROBATE—*concld.*

application must be *bonâ fide* and he must give some reasonable and true explanation of the delay. *Hoffman* v. *Norris, 2 Phillim. 230, Merryweather* v. *Turner, 3 Curt. 802,* and *Kunja Lal Chowdhury* v. *Kailash Chandra Chowdhury, 14 C. W. N. 1068,* referred to. MANORAMA CHOWDHURANI *v.* SHIVA SUNDARI MOZUMDAR (1914)

I. L. R. 42 Calc. 480

3. ——— *Probate or letters of administration, revocation of—Effect on alienation under revoked grant—Void or voidable grant—Mortgage to pay off debt due by estate, if subsists after revocation.* A purchaser of property sold under a grant of probate or letters of administration, subsequently revoked, in order to discharge a debt which the true executor or administrator was compellable to pay acquires an indefeasible title. There has been a divergence of judicial opinion on the question of the effect of revocation of a probate or letters of administration, the effect being made to depend upon whether the grant was void or voidable. A view more favourable to the rights of a *bonâ fide* transferee for value without notice has been taken in recent decisions where grants have been treated as operative until revoked even when obtained by fraud and by suppression of the fact that the deceased had left a will. *Debendra Nath Dutt* v. *Administrator-General of Bengal, L. R. 35 I. A. 109* : *s. c. I. L. R. 35 Calc. 955* ; *12 C. W. N. 802,* referred to. Where a co-proprietor of the executor having satisfied the entire Government revenue obtained a decree for contribution against him, and in exetion thereof a property belonging to the estate was sold at an inadequate price, and meanwhile the probate having been revoked, administrators appointed in his place with the Court's sanction mortgaged the property to procure money which they applied in setting aside the sale under s. 310A of the Civil Procedure Code of 1882, and subsequently on appeal by the executor, the latter was restored to office and the letters of administration were cancelled : *Held,* that the mortgage held good. SAILAJA PROSAD CHATTERJEE *v.* JADU NATH BOSE (1914) **19 C. W. N. 240**

PROBATE AND ADMINISTRATION ACT (V OF 1865).

See HINDU LAW—WILL.

I. L. R. 38 Mad. 369

——— s. 34—*Wrongful alienation of deceased's estate, apprehended by caveator—Temporary injunction, application for, if lies—Civil Procedure Code (Act V of 1908), O. XXXIX, rr. 1, 7—Administrator pendente lite, appointment of, proper course—Injunction when may be granted—English practice.* A probate proceeding is not a suit in which there is property in dispute as contemplated by r. 1 of O. XXXIX of the Civil Procedure Code, as the only question in controversy in such a proceeding is that of representation of the estate of the deceased and no question of title thereto, *i.e.*, the title of the deceased or of the conflicting titles alleged by the parties to the proceeding can be investigated by the court. But the Court of probate is not therefore incompetent to grant a temporary injunction in any circumstances. The proper procedure to follow in cases of this description is for the aggrieved party to apply to the Court for the appointment of an administrator *pendente lite.* When such an application has been made, the Court may, in case of necessity, grant a temporary injunction either in exercise of its inherent power or under r. 7 of O. XXXIX of the Civil Procedure Code. English practice referred to and contrasted. NIROD BARANI DEBI *v.* CHAMATKARINI DEBI (1914)

19 C. W. N. 205

PROBATE AND ADMINISTRATION ACT (V OF 1865)—*contd.*

——— s. 34—*concld.*

——— s. 50—

See PROBATE. **I. L. R. 42 Calc. 480**

1. ——— *Civil Procedure Code (1908), ss. 114 and 151—Letters of Administration—Cancellation of order—Procedure.* A Court which has once granted letters of administration cannot revoke them without notice to the person in whose favour they have been granted. Where letters of administration have been granted *ex parte* and an application is made to revoke them, it is open to the court concerned to proceed either under s. 114 or s. 151 of the Code of Civil Procedure or under s. 50 of the Probate and Administration Act (1881) PARMAN *v.* BOHRA NEK RAM (1915)

I. L. R. 37 All. 380

2. ——— *Revocation, application for—Question of genuineness of will if arises—Just cause—Fraudulent concealment from Court by person cited of transfer of his interests—Assignee not cited in consequence—Assignee if may apply for revocation, when assignment subsequent to testator's death.* No question of the genuineness of the will arises for consideration till the Court has decided that the probate must be revoked on one or more of the grounds specified in s. 50 of the Probate and Administration Act. The only matter for consideration upon an application for revocation of probate is whether the applicants have made out a just cause for revocation. The application could not be thrown out at this stage on the ground that the evidence adduced by the applicant was not sufficient to throw doubt upon the genuineness of the will. A person interested by assignment in the estate of the deceased may, where a will has been set up and proved at variance with his interests, apply for revocation of the probate of the will so set up. He need not show that he had an interest in the estate of the deceased at the time of his death. An interest acquired subsequently by purchase of a part of the estate is sufficient. Where A having applied for probate of a will, caused citation to be issued on B his father who but for the will would inherit a portion of the estate, but the notice was served on B a week after B had assigned his interests to C, but neither B nor A, who presumably knew of the transfer by B, brought the fact of the assignment to the Court's notice, and probate was granted without the as-

PROBATE AND ADMINISTRATION ACT (V OF 1865)—*concld.*

——— **s. 50**—*concld.*

signee's getting any notice of the proceedings: *Held*, that the proceeding if not defective in substance was bad because the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case. MOKHADAYINI DASSI *v.* KARNADHAR MANDAL (1914) . . . **19 C. W. N. 1108**

——— **ss. 50, 62, 69**—*Hindu reversioner if to be specially cited in probate proceeding—When Court misled by wrong information refrained from issuing special citation, proceeding defective in substance—Person not party, when bound—Full knowledge of proceeding and capacity to intervene to be proved—Onus of proof.* Although a reversioner under the Hindu Law has no present alienable interest in the property left by the deceased, he is substantially interested in the protection or devolution of the estate and as such is entitled to appear and be heard in a probate proceeding. Although omission in an application under s. 62 of the Probate and Administration Act to set out the names and residences of the family or other relatives of the deceased may not affect the validity of the proceeding, where the applicant makes an incorrect statement on these points and the Court being misled thereby does not direct the issue of special citation in the exercise of its discretion under s. 69, the proceeding to obtain probate is defective in substance within the meaning of the first clause of the Explanation to s. 50 of the Act. The rule that a person is bound by probate proceedings to which he is no party and of which he has received no notice from Court depends upon proof of his full knowledge of the proceeding and his capacity to make himself a party; and the burden of proof is on the person who alleges it. It is not necessary for the party who applies for revocation to prove not only that no special citation was served on him but also that he had no knowledge of the proceedings. *Premchand Das* v. *Surendra Nath Saha, 9 C. W. N. 190*, followed. SYAMA CHARAN BAISYA *v.* PRAFULLA SUNDARI GUPTA (1915) . . . **19 C. W. N. 882**

——— **s. 90**—*Sanction of Court obtained in respect of principal, but not of interest—Stipulation as to interest, if binding—Post diem interest.* S. 90 of the Probate and Administration Act which authorises an administrator to grant a mortgage of immoveable property vested in him only with the previous permission of the Probate Court implies that sanction of the Court should be taken of all the essential elements of the mortgage transaction including the provision for payment of interest. Where the principal amount only was mentioned in the application for sanction, but in the mortgage actually executed the administrators stipulated to pay compound interest at 30 per cent. per annum with half-yearly rests, the Court reduced it to simple interest at 9 per cent. per annum, and it was directed that the interest should be added to the mortgage money as was done in *Chajmal* v. *Brij Bhukan, L. R. 22 I. A. 199*: s.c.

PROBATE AND ADMINISTRATION ACT (V OF 1865)—*concld.*

——— **s. 90**—*concld.*

I. L. R. 17 All. 511. SAILAJA PROSAD CHATTERJEE *v.* JADU NATH BOSE (1914) . **19 C. W. N. 240**

PROCEDURE.

See CIVIL PROCEDURE CODE (1908), O. II. R. 2 . . **I. L. R. 37 All. 646**

See CONTEMPT OF COURT. **I. L. R. 42 Calc. 1169**

See CRIMINAL PROCEDURE CODE, S. 133. **I. L. R. 37 All. 26**

See CRIMINAL PROCEDURE CODE, SS. 195 AND 537 . **I. L. R. 37 All. 282**

See CRIMINAL PROCEDURE CODE, S. 339. **I. L. R. 37 All. 331**

See LAND ACQUISITION ACT (I OF 1894). SS. 9, 18 AND 25 **I. L. R. 37 All. 69**

See MAHOMEDAN LAW—MARRIAGE. **I. L. R. 42 Calc. 351**

See PROBATE AND ADMINISTRATION ACT (V OF 1881), S. 50. **I. L. R. 37 All. 280**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 18, 36 AND 47. **I. L. R. 37 All. 45**

See RATEABLE DISTRIBUTION. **I. L. R. 42 Calc. 1**

See U. P. COURT OF WARDS ACT (III OF 1899), SS. 16 AND 20. **I. L. R. 37 All. 585**

PROCEEDINGS.

——— **pendency of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 63. **I. L. R. 38 Mad. 535**

PROMISOR.

——— **heirs of—**

See PRE-EMPTION. **I. L. R. 38 Mad. 114**

PROMISSORY NOTE.

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 13, 15D, 16. **I. L. R. 39 Bom. 73**

See VARTHAMANAM. **I. L. R. 38 Mad. 660**

——— **suit on—**

See EVIDENCE ACT (I OF 1872), S. 92, AND PROV. (2) **I. L. R. 39 Bom. 399**

1. ——— *Joint execution—Consideration—Surety.* The consideration paid to any one of several joint promisors is legally sufficient to support the promise of all the joint promisors. *Narasimha* v. *Ramaswami, 24 Mad. L. J. 91*, applied. *Sesha Aiyar* v. *Mangal Doss Jee, 20 Mad. L. J. 144*, distinguished. *Per* Curiam :—

PROMISSORY NOTE—*concld.*

S. 92 of the Indian Evidence Act precludes an executant from setting up a contemporaneous oral agreement that he should not be made liable on the promissory note. *Per* SPENCER, J.—S. 127 of the Indian Contract Act shows that the value received by the principal debtor is a sufficient consideration to bind the surety and s. 128 makes his liability co-extensive. SORNALINGA MUDALI *v.* PACHAI NAICKAN (1913) **I. L. R. 38 Mad. 680**

2. ———— *Suit by assignee of promissory note against executants—Payment of consideration by assignee, irrelevant. Held,* that in a suit by the assignee of a promissory note against the executants the latter are not concerned with the question whether the assignment was for consideration or not. All that they are entitled to have ascertained is that the plaintiff is the legal holder of the note and able to give them a good discharge. BALDEO SAHAI *v.* BEHARI LAL (1914) **I. L. R. 37 All. 99**

PROOF IN COMMON FORM.

See PROBATE . **I. L. R. 42 Calc. 480**

PROPERTY.

———— vesting of—

See EVIDENCE ACT (I OF 1872), S. 92, PROVS. 1 AND 3. **I. L. R. 38 Mad. 226**

PROPRIETARY TITLE.

See AGRA TENANCY ACT (II OF 1901), S. 199 . . **I. L. R. 37 All. 95**

PROSECUTION.

See EVIDENCE . **I. L. R. 42 Calc. 784**

———— duty of—

See CHARGE . **I. L. R. 42 Calc. 957**

———— duty of, to call all witnesses—

See PENAL CODE, S. 114. **19 C. W. N. 28**

PROSTITUTION.

See HINDU LAW—INHERITANCE. **I. L. R. 38 Mad. 1144**

PROTECTION.

———— doctrine of—

See OCCUPANCY HOLDING. **I. L. R. 42 Calc. 745**

PROVIDENT INSURANCE.

———— *Company with share capital carrying on business of a provident insurance society—Liability to registration as such before receiving premiums—Provident Insurance Societies Act (V of 1912) ss. 2 (8), 6, 7, 21.* A company having a share capital divided into shares must, if it intends to carry on the business of a provident insurance society, be registered under the Provident Insurance Societies Act (V of 1912) before it receives any premium or contribution.

PROVIDENT INSURANCE—*concld.*

Oriental Government Security Life Assurance Co. v. Oriental Assurance Co., I. L. R. 40 Calc. 570, explained. DEPUTY LEGAL REMEMBRANCER *v.* SITAL CHANDRA PAL (1914) **I. L. R. 42 Calc. 300**

PROVIDENT INSURANCE SOCIETIES ACT (V OF 1912).

———— ss. 2 (*8*), 6, 7, 21—

See PROVIDENT INSURANCE. **I. L. R. 42 Calc. 300**

PROVINCIAL INSOLVENCY ACT (III OF 1907).

———— ss. 4 cls. (*b*), (*g*), 16—

See MINOR . . **I. L. R. 42 Calc. 225**

———— ss. 13, 16, 34—

See INSOLVENCY . **I. L. R. 42 Calc. 289**

———— ss. 15, 16, 18, 20, 22, 46 and 52—

———— *Official Receiver's order dismissing insolvency petition—No appeal direct to High Court—Practice—No interference in revision where other remedy open.* No appeal lies under s. 46, cl. (*2*), of the Provincial Insolvency Act to the High Court from the order of an Official Receiver dismissing an insolvency petition; but an appeal against orders passed by the Official Receiver lies, under s. 22, only to the District Court. The language of s. 22 read with s. 52, cl. (*2*), shows that such right of appeal is not confined to orders made under ss. 18, 19, and 20, but extends to all orders of the Receiver. *Obiter*: An Official Receiver invested with the powers mentioned in cl. (*a*) of s. 52 (*1*) has the power to dismiss an insolvency petition under s. 15. The Court will not interfere under s. 115, Civil Procedure Code, in a case where other adequate remedy was open. CHIDAMABARAM *v.* NAGAPPA (1912) . . **I. L. R. 38 Mad. 15**

———— s. 16, cl. (*3*)—

See RAILWAY RECEIPT. **I. L. R. 38 Mad. 664**

———— ss. 18, 36, 47—*Power of Court to dispossess third persons of property belonging to an insolvent—Inquiry as to ownership of property alleged to belong to the insolvent—Procedure.* A Court exercising jurisdiction under the Provincial Insolvency Act, 1907, has power to inquire whether property in the possession of a third party and alleged by the receiver to be property of the insolvent is really so or not, and if it finds that such property is the property of the insolvent, to order its delivery to the receiver. But in making such an inquiry the Court should follow the procedure of a Civil Court in a civil suit; should require the receiver and the party in possession to state their respective cases in writing; should fix issues, and should give the parties an opportunity of producing evidence. BANSIDHAR *v.* KHARAGJIT (1914) **I. L. R. 37 All. 65**

———— s. 31—"*Secured creditor*"—*Insolvency—Agreement appointing creditor agent for sale*

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— s. 31—*concld.*

of debtor's goods—Proceeds to be paid to creditor. The owners of a printing and publishing business who owed money to a bank entered into an agreement with the bank, the substance of which was that all books then in stock and all books to be published thereafter were to be made over at once to the bank; that a commission at a certain rate was to be allowed to the bank on the sale of the books, and that the sale-proceeds of the books were to be credited to the debtors' loan account every month after deducting the commission due to the bank. There were also other clauses, and finally one Ram Charan Shukul agreed to act on behalf of the bank as sole agent for the sale of the debtor's books. *Held,* that the bank was, on this agreement, entitled to rank as a secured creditor of the owners of the printing and publishing business in the insolvency of the latter. ALLAHABAD TRADING AND BANKING CORPORATION LD. *v.* GHULAM MUHAMMAD (1915)
I. L. R. 37 All. 383

——— s. 34—

1. ——— *Attachment before judgment—Plaintiff obtaining decree if acquires lien on money deposited to have attachment withdrawn—Defendant adjudicated insolvent before money could be realised in execution of decree—Receiver in insolvency if may claim money deposited.* Where defendant's properties were attached before judgment in plaintiff's suit, but the Court directed the attached properties to be released from attachment on the defendant's paying Rs. 500 as cash security; and after the same was paid and the properties released, the defendant was adjudged an insolvent under Act III of 1907, but not before the plaintiff's suit was decreed: *Held,* that the plaintiff acquired no lien or charge upon the money deposited as security for getting the attachment before judgment withdrawn, and the Receiver in solvency was entitled to have the money paid to him. The money not having been realised in execution of a decree prior to the adjudication order, s. 34 of Act III of 1907 did not apply. PROMOTHA NATH CHAKRAVARTI *v.* MOHINI MOHAN SEN (1915) **19 C. W. N. 1200**

2. ——— *Decree for sale of certain property was obtained by one of the creditors—Prior to sale judgment-debtor was adjudged insolvent—Position of other creditors.* S. 34 of the Provincial Insolvency Act was intended to put the creditors of the insolvent who have not actually attached the property before the date of the order of adjudication in as good a position as creditors of the insolvent who but for his insolvency would have been entitled to a rateable distribution of the assets realized on an execution sale. Certain property was attached before judgment and a decree was subsequently obtained for its sale; but prior to a sale actually taking place the judgment-debtor was adjudged an insolvent. *Held,* that as the order of adjudication was passed prior to the sale of the property it must be regarded as the property of the judgment-debtor and as such was available to the general body of creditors. KASHI NATH *v.* KANHAIYA LAL SHARMA (1915)
I. L. R. 37 All. 452

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*contd.*

——— s. 34—*concld.*

——— s. 36—*Insolvency —Right of one creditor to challenge claim of another—Duty of Court to inquire—Jurisdiction. Held,* that it is open to any creditor of an insolvent to challenge the validity of a debt set up by another creditor and, if he does so, the Judge is bound to inquire into the truth of his allegations in the insolvency, and cannot merely refer the applicant to his remedy by suit. KHUSHHALI RAM *v.* BHOLAR MAL (1915)
I. L. R. 37 All. 252

——— s. 37—*Subsections (1), (2)—Fraudulent preference, how determined—Debtor's intention and motive material—Preference due entirely to pressure from creditor, if fraudulent—Creditor, if may plead good faith—Onus.* Under s. 37 of the Provincial Insolvency Act, good faith on the part of the creditor affords him no protection where the intention of the debtor to give him preference is established, although sub-s. (2) of the section protects a person who in good faith and for valuable consideration has acquired title through or under a creditor of the insolvent. "Preference" implies an act of free will, and there can be no "preference" where the act is the result of pressure brought to bear on the debtor by the creditor, though there would be fraudulent preference where, notwithstanding that the payment or disposition might never have been made but for the importunity of the creditor, it is also a fact that the payment never would have been made but for the desire to prefer. The presumption of fraudulent intention may be repelled; if it is apparent that the debtor acted in fulfilment of a prior agreement, but it will not suffice to prove that the debtor was moved by a mere sense of honour or a sense of duty or of moral obligation or that he acted from motives of kindness or gratitude. The intention of the debtor is the paramount consideration and if the transaction can be properly referred to some other motive than that of giving the particular creditor a preference over the others, the payment is not fraudulent. In the determination of the question whether a person is able or unable to pay his debts as they become due from his own money, the fact that he has money locked up which at a later period may be available for the payment of his debts is immaterial. Where an act is impeached as a fraudulent preference, the onus of proof lies on the Receiver, even if the debtor was insolvent at the time of the payment and knew himself to be so, though in such a case the onus may shift. NRIPENDRA NATH SAHU *v.* ASHUTOSH GHOSH (1914) **19 C. W. N. 157**

——— s. 43—*Receiver's report—Insufficient to base a conviction on.* On report by a receiver of an insolvent's property to the effect, that the insolvent had fraudulently transferred certain property of his just before he was declared an insol-

PROVINCIAL INSOLVENCY ACT (III OF 1907) —*concld.*

——— s. 43—*concld.*

vent, and that he had concealed the fact that he was the owner of a certain shop, the Court convicted him under s. 43 of the Provincial Insolvency Act. *Held*, that a receiver's reports do not constitute legal evidence upon which an order under s. 43 of the said Act can be based, and therefore a conviction under s. 43 based only on a receiver's report is bad in law. *Emperor* v. *Chiranji Lal, I. L. R. 36 All. 576, Nathu Mal* v. *The District Judge of Benares, I. L. R. 32 All. 547, Ex-parte Campbell In re, Wallace, 15 Q. B. D. 213*, referred to. NAND KISHORE *v.* SURAJ MAL (1915)
I. L. R. 37 All. 429

——— s. 46—*Leave to appeal refused by District Judge—Concurrent jurisdiction of High Court to grant leave—Order to District Judge, if to be set aside before grant of leave—Practice—Civil Procedure Code (Act V of 1908), O. XLI, r. 11, hearing under, if necessary, after leave granted.* The High Court having concurrent jurisdiction, with the District Judge, to grant leave to appeal from an order under the Insolvency Act, can do so, when such leave has been refused by the District Judge. Where such leave is granted, there is no necessity for a further hearing under O. XLI, r. 11, of the Civil Procedure Code. MADHU SUDAN PAL *v.* PARBATI SUNDARI DASYA (1914)
19 C. W. N. 760

——— s. 66—*Mortgage, if made in good faith —Onus.* Under s. 36 of the Provincial Insolvency Act, the onus of proving that a mortgage executed by an insolvent within two years before his adjudication as such was made in good faith and is therefore binding on the Receiver is on the mortgagee. NILMONI CHAUDHURI *v.* BASANTA KUMAR BANERJI (1914) . . . . **19 C. W. N. 865**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

——— ss. 27, 32, 33 and 35—

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 24 . **I. L. R. 38 Mad. 25**

——— s. 35—*Jurisdiction—Munsif vested with the powers of a Judge of the Court of Small Causes succeeded by one not vested with such powers —Appeal.* When a Munsif vested with the powers of a Court of small causes is succeeded in office by a Munsif not vested with such powers, the latter under s. 35 of the Provincial Small Cause Courts Act, bound to try the suits pending on the file as regular suits and an appeal lies against his decision. *Shiam Behari Lal* v. *Kali, 12 All. J. R. 109*, followed. *Mangal Sen* v. *Rup Chand, I. L. R. 13 All. 324*, dissented from. *Kamta Prosad* v. *Mahabal Singh, 6 O. C. 81, Dulal Chandra Deb* v. *Ram Narain Deb, I. L. R. 31 Calc. 1057, Ram Chandra* v. *Ganesh, I. L. R. 23 Bom. 382*, referred to. SARJU PRASAD *v.* MAHADEO PANDE (1915)
I. L. R. 37 All. 450

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*contd.*

——— Sch. II, Art. 8—

See HOMESTEAD LAND.
I. L. R. 42 Calc. 638

1. ——— *Grant of forest rights—Suit for rent by grantor, if may be entertained by Small Cause Court—"Rent," what is—Bengal Tenancy Act (VIII of 1885), ss. 144, 193.* A grant under which the grantee becomes entitled to cut and remove during a specified period trees which might during that period attain a prescribed size (whether it creates an interest in land or not) is a grant of forest rights within the meaning of s. 193 of the Bengal Tenancy Act. The transaction cannot be regarded as a sale of timber, and the consideration payable for such rights is rent within the meaning of the term as used in cl. (8) of Sch. II of the Provincial Small Cause Courts Act. Such a suit cannot be entertained by a Small Cause Court, and should be instituted under s. 144 of the Bengal Tenancy Act in the Court which would have jurisdiction to entertain a suit for the possession of the trees. BANDE ALI FAKIR *v.* AMUD SARKAR (1914) . **19 C. W. N. 415**

2. ——— *Special authority to try rent suits under Small Cause Court procedure, if may be conferred generally on the Court.* Cl. 8 of Sch. II of the Provincial Small Cause Courts Act requires that the Judge personally should have been invested with authority to exercise jurisdiction and not that jurisdiction should be conferred upon the Court. A notification of the Local Government vesting all Munsifs of certain places with power to try, under the Small Cause Court procedure, suits for recovery of rent of homestead lands within their respective jurisdictions when the value did not exceed Rs. 50 was insufficient to confer on the officers concerned the power referred to in cl. 8 of Sch. II of the Provincial Small Cause Courts Act. SAFER ALI MONDAL *v.* GOLAM MONDAL (1915) . . . **19 C. W. N. 1236**

——— Sch. II, Art. 13—*Revenue Jurisdiction Act (Bom. X of 1876), s. 5, cl. (c)—Civil Procedure Code (Act V of 1908), O. VIII, r. 6—Suit by an Inamdar against a Khatedar for recovery of sums —Dues—Suit not cognizable by a Small Cause Court—Set-off claimed in a capacity different from that in suit, not allowable.* Sums payable by a Khatedar to an Inamdar as superior holder are dues and a suit to recover such dues, though less than Rs. 500, is not cognizable by a Court of Small Causes and a decree passed in such suit is subject to a second appeal. In a suit brought by an Inamdar against a Khatedar for the recovery of dues in respect of certain immoveable property payable by the Khatedar, the defendant, as a *pujari* (worshipper), claimed to set off the stipend payable to him by the plaintiff. *Held*, that the defendant could not claim the set-off which was due to him in a different capacity from that in which he held as tenant or Khatedar of the plaintiff. MADHAVRAO MORESHVAR *v.* RAMA KALU (1914) **I. L. R. 39 Bom. 131**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*contd.*

——— **Sch. II, Arts. 15, 16**—*Mortgage money, unpaid balance of, suit by mortgagor for recovery of, if lies—Small Cause Court, jurisdiction of.* A mortgagor cannot sue for recovery of the balance of the amount promised to be advanced but not paid to him, and such a suit is not cognizable by the Court of Small Causes, but it is open to the mortgagor to sue in the Small Cause Court for damages for the breach of contract provided the damages claimed are within the pecuniary jurisdiction of the Court. SHAIK GALIM *v.* SADARJAN BIBI (1915) . . . **19 C. W. N. 1332**

——— **Sch. II, Art. 28**—*Suit by heirs of intestate against wrongdoer, if within.* Suits for the "whole or a share of the property of an intestate" excluded by Art. 28 of Sch. II of the Provincial Small Cause Courts Act from cognisance by the Small Cause Court are suits for the recovery of the property of an intestate between rival claimants to the estate or against persons administering the estate. The article does not apply to suits by heirs against wrongdoers. *Kapalee Bewah* v. *Keshram Kooch, 11 W. R. 93, Moheshur* v. *Kailash Nath, 7 C. L. R. 71,* and *Chedi* v. *Gulah, I. L. R. 27 All. 622,* followed. *Girish Chunder* v. *Anna Dossee, 17 W. R. 46, Nobin Chunder* v. *Dribomoyee, 17 W. R. 520,* and *Kapalee Bewah* v. *Keshram Kooch, 11 W. R. 93,* referred to. TIKA SAHU *v.* CHIRKAT SAHU (1914) . . . **19 C. W. N. 614**

——— **Sch. II, Art 35 (g)**—*Contract to marry, breach of—Loss of provisions and articles.* A suit by a father of a Mahomedan girl against the father of a minor boy for breach of contract to marry the boy to the plaintiff's daughter and for compensation for the loss sustained by the waste of articles and provisions in consequence of such breach, is governed by Art. 35, cl. (*g*) of the second schedule to the Provincial Small Cause Courts Act (IX of 1887) and is therefore not cognisable by a Provincial Small Cause Court. *Kali Sunker Dass* v. *Koylash Chunder Dass, I. L. R. 15 Calc. 833,* followed. MOIDIN KUTTI *v.* POKER (1913) **I. L. R. 38 Mad. 274**

——— **Sch. II, Art. 38**—*Suit for money for maintenance under an agreement, cognisable by a Small Cause Court.* A suit to recover from the defendant paddy expended by the plaintiff for the maintenance of their grand-mother, for which under the agreement of partition between them the defendant was bound to pay a certain quantity is a suit of a small cause nature; the basis of the suit being the agreement. *Ramaswamy Pantulu* v. *Narayanamoorthy, 14 Mad. L. J. 480,* applied. ANNASAMI SASTRIAL *v.* RAMASAMI SASTRIAI (1913) **I. L. R. 38 Mad. 553**

——— **Sch. II, Art. 41**—*Contribution, suit for—Rent decree—Execution by assignee against a joint tenant—Payment under compulsion—Suit, if cognisable by Small Cause Court—Bengal Tenancy Act (VIII of 1885), s. 148 (h)—Contract Act (IX of 1872), ss. 69, 70.* Where an assignee of a rent-decree having attached the moveables of plaintiffs who were joint tenants of the holding with the defendants, the plaintiffs satisfied the decree, and then sued the defendants for contribution: *Held,* that the suit was excluded from the cognisance of the Small Cause Court by Art. 41 of the Second Schedule to the Provincial Small Cause Courts Act. That if it were assumed that an assignee of a decree for rent is precluded from executing it even as a decree for money, the decree itself was not extinguished and could be executed on the assignee obtaining an assignment of the landlord's interests or on his retransferring the decree to the landlord. Where, therefore, on the assignee's application for execution the Court ordered execution to issue and the plaintiff paid in the decretal amount under compulsion of legal process: *Held,* that the plaintiff was entitled to sue for contribution under s. 70 as also under s. 69 of the Contract Act. The benefit which the defendants got was that they were absolved from the liability to be pursued either by the assignee or assignor of the decree. If a payment made to an assignee of a rent-decree is accepted by him, the decree is satisfied and there is nothing in s. 148 (*h*) of the Bengal Tenancy Act to prevent it. RAJANI KANTA GHOSH *v.* RAMA NATH ROY (1914) **19 C. W. N. 458**

PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concld.*

——— **Sch. II, Art. 41**—*concld.*

PROXY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3. **I. L. R. 38 Mad. 850**

PUBLIC CHARITY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 92 . **I. L. R. 39 Bom. 580**

PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895, 1897).

See SALE FOR ARREARS OF REVENUE. **I. L. R. 42 Calc. 765**

PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895).

——— **s. 9 (2), (3)**—*Certificate-sale, when is vitiated by irregularities—Nullity and irregularity, distinction between—Requisition not signed—Certificate not in due form—Certificate signed mechanically—Certificate Officer to exercise discretion in issuing certificate—Proof of service of notice—Entry in order sheet if sufficient—Presumption in favour of regularity of official acts, if arises when proceedings shewn to have been carried on carelessly and in slovenly manner.* No hard and fast line can be drawn between a nullity and an irregularity and when the provision of a statute has been contravened, if a question arises as to how far the proceedings are affected thereby it must be determined with regard to the nature, scope and object of the particular provision violated. An Appellate Court should not dismiss a suit on the ground only that the plaint was not duly signed and verified, such a defect does not affect the merits of the case or the jurisdiction of the Court. So

PUBLIC DEMANDS RECOVERY ACT (BENG. I OF 1895)—*concld.*

——— s. 9—*concld.*

also proceedings taken upon a certificate should not be treated as void merely because the requisition under s. 9 (*2*) of the Public Demands Recovery Act was not duly signed and verified. But there can be no valid sale on a certificate which did not specify the amount due, and otherwise did not comply with the forms laid down by the Act and which the officer issuing the certificate appeared to have signed mechanically. The obvious intention of s. 9 (*3*) of the Public Demands Recovery Act is that the officer shall use his discretion as to the issue of a certificate, determine whether the case is a proper one for it, whether the money be due or not. *Baijnath* v. *Ramgat, L. R. 23 I. A. 45 : s. c. I. L. R. 23 Calc. 775,* and *Baijnath* v. *Ramgat, 5 C. L. J. 687,* followed. The mere entry in the order-sheet of the certificate case that notice had been served is no proof that service was effected. When the circumstances of the case show that the proceedings have been carried on in a careless or slovenly manner, the Court will be slow to apply the maxim *omnia præsumuntur rite et solenniter esse acta donec probetur in contrarium.* MOHIUDDIN *v.* PIRTHICHAND LAL CHOWDHURY (1914) . **19 C. W. N. 1159**

PUBLIC NUISANCE.

1. ——— *Encroachment on public pathway—Application to District Magistrate by letter—Reference of applicant by letter to Civil Court—Subsequent petition to the Subdivisional Magistrate regarding the same pathway—Issue of conditional order—Appearance of opposite party and claim of title to the path—Dropping proceedings without taking evidence—Criminal Procedure Code (Act V of 1898), ss. 133, 137.* When a Magistrate makes a conditional order under s. 133 of the Criminal Procedure Code against a party who appears and shows cause, he is bound, under s. 137, to take evidence as in a summons case. It is open to him thereafter to consider whether there is a complete answer to the case, or whether it is not a proper one for reference to the Civil Court. SAROJBASHINI DEBI *v.* SRIPATI CHARAN CHOWDHRY (1914) **I. L. R. 42 Calc. 702**

2. ——— *Unlawful obstruction to public way—Bonâ fide question of title—Duty of Magistrate to determine the question—Criminal Procedure Code (Act V of 1898), ss. 133, 137. Per* SHARFUDDIN, J.—When a party, against whom an order under s. 133 of the Criminal Procedure Code is contemplated, appears and raises the question that a pathway, alleged to have been unlawfully obstructed, is not a public but a private one, the Magistrate should not only decide whether it is public or private, but he should determine whether the claim is *bonâ fide* or a mere pretence set up only to oust the jurisdiction of the Court. If he finds that the claim is a mere pretence, he may proceed to pass a final order; but if he finds that the claim, though not substantiated, has been raised *bonâ fide,* he should stay

PUBLIC NUISANCE—*concld.*

his hand and refer the party to the Civil Court, and if the party does not have recourse to such Court within a reasonable time, the Magistrate may then proceed to make the order absolute. *Belat Ali* v. *Abdur Rahim, 8 C. W. N. 143, Matukdhari Tewari* v. *Hari Madhab Das, 9 C. W. N. 72, Luckhee Narain Banerjee* v. *Ram Kumar Mukherjee, I. L. R. 15 Calc. 564,* and *Preonath Dey* v. *Gobordhone Malo, I. L. R. 25 Calc. 278,* referred to. The provisions of s. 133 of the Code should be sparingly used. TEUNON, J., in the circumstances of the case, assented to the order proposed. MANIPUR DEY *v.* BIDHU BHUSHAN SARKAR (1914) **I. L. R. 42 Calc. 158**

PUBLIC PATHWAY.

——— **encroachment on—**

See PUBLIC NUISANCE.
I. L. R. 42 Calc. 702

——— **obstruction to—**

See PUBLIC NUISANCE.
I. L. R. 42 Calc. 158

PUBLIC POLICY.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3.
I. L. R. 38 Mad. 850

See SLAVERY BOND.
I. L. R. 42 Calc. 742

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54 . **I. L. R. 37 All. 631**

——— **contravention of—**

See PALAS OR TURNS OF WORSHIP.
I. L. R. 42 Calc. 455

PUBLIC PROSECUTOR.

See PENAL CODE, S. 114.
19 C. W. N. 28

PUBLIC PROSECUTOR, DUTY OF.

——— *Duty to produce all the evidence in his power bearing directly on the charge—Duty to call all the available eye-witnesses in capital cases—Omission to examine material witnesses, effect of—Inference adverse to the prosecution arising therefrom—Practice.* The purpose of a criminal trial is not to support at all costs a theory, but to investigate the offence and to determine the guilt or innocence of the accused ; and the duty of a Public Prosecutor is to represent not the police but the Crown, and this duty should be discharged fairly and fearlessly and with a full sense of the responsibility attaching to his position. It is not his duty to call only witnesses who speak in his favour. *Empress* v. *Dhunno Kazi, I. L. R. 8 Calc. 121,* discussed and explained. He should, in a capital case, place before the Court the testimony of all the available eye-witnesses though brought to the Court by the defence, and though they give different accounts. The rule is not a technical one, but founded on commonsense and humanity. *Reg.* v. *Holden, 8 C. & P. 609,* followed. Where witnesses (who from their connec-

PUBLIC PROSECUTOR, DUTY OF—*concld.*

tion with the transactions in question must be able to give important information) are not called without sufficient reasons being shown, the Court may properly draw an inference adverse to the prosecution. *Empress* v. *Dhunno Kazi, I. L. R. 8 Calc. 121*, referred to. A conviction under s. 114 of the Penal Code cannot stand where the abetment charged necessarily requires the presence of the abettor. To come within the section, the abetment must be complete apart from the presence of the abettor. RAM RANJAN ROY *v.* EMPEROR (1914) **I. L. R. 42 Calc. 422**

PUBLIC RELIGIOUS TRUST.

See PARTIES. **I. L. R. 42 Calc. 1135**

PUBLIC ROAD.

——— *Metalled and unmetalled portions equally part of road—Right of public way.* Where the question is as to the breadth of a public road, it must be taken that all the ground over which the public have a right of way is part of the road: the mere fact that part of the road may be metalled for the greater convenience of the traffic will not render the unmetalled portion on each side any the less a public road or street. MUNICIPAL BOARD OF AGRA *v.* SUDARSHAN DAS SHASTRI (1914) **I. L. R. 37 All. 9**

PUBLIC SERVANT.

See PENAL CODE (ACT XLV OF 1860), SS. 332, 323. **I. L. R. 37 All. 353**

PUBLIC TRUST.

See CIVIL PROCEDURE CODE (1908), S. 92. **I. L. R. 37 All. 296**

PUISNE MORTGAGEE.

——— **effect of, on rights of—**

See MORTGAGE. **I. L. R. 37 All. 309**

PURCHASER

See LIMITATION ACT (IX OF 1908), S. 22. **I. L. R. 38 Mad. 837**

See OCCUPANCY HOLDING. **I. L. R. 42 Calc. 745**

PURDANASHIN.

See PARDANISHIN.

PUTNI.

See PATNI LEASE.

——— *Putni taluk, sale of, for arrears of rent —Suit by purchaser for recovery of possession of lands within taluk brought within 12 years from date of purchase —Limitation —Applicability of Art. 121, Limitation Act—Adverse possession prior to creation of putni, effect of—Cause of action—Adverse possession if arrested by creation of subordinate tenure, when proprietor out of possession —Doctrine of possession following title, application of, where plaintiff has to prove possession at a particular point of time—Ancient documents showing exercise of right to property, consideration of, as*

PUTNI—*contd.*

presumptive evidence of possession—Sale under s. 159, Bengal Tenancy Act, status of purchaser in—Encumbrance, meaning and annulment of. The plaintiff who was the purchaser of a *putni taluk* at a sale held in 1899 in execution of a rent decree under the Bengal Tenancy Act brought suits against the defendants within twelve years from date of his purchase for declaration of his title to the lands held by them within the *putni* taluk and for recovery of possession thereof. There was ample evidence on the record that the adverse possession of the defendants and their predecessors commenced before the creation of the *putni*. *Held*, that the suits were barred by limitation and Art. 121 of the 2nd Schedule of the Limitation Act did not apply to them. That the plaintiff not having established that the possession of the defendants commenced after the creation of the *putni* or that the proprietor of the estate was in possession at the time when the *putni* was granted the interests acquired by the defendants could not be deemed to be an incumbrance within the meaning of Art. 121 nor was it an encumbrance within the meaning of s. 11, cl. (1) of Reg. VIII of 1819. That the cause of action did not arise on the date on which the plaintiff purchased the *taluk* at the sale held under the Bengal Tenancy Act. That the adverse possession contemplated in the decisions *Nafar Chandra* v. *Rajendra Lal, I. L. R. 25 Calc. 167*, *Woomesh Chandra Goopta* v. *Raj Narain Roy, 10 W. R. 15*, *Khanto Moni Dassi* v. *Bijoy Chandra, I. L. R. 19 Calc. 187*, and *Karim Khan* v. *Broja Nath Das, I. L. R. 22 Calc. 244*, is possession which commences after the creation of the *putni* tenure. These cases are founded on the principle laid down in s. 11 of Reg. VIII of 1819 which is that the purchaser of a *putni taluk* at a sale held under Reg. VIII of 1819 takes the *taluk* in the state in which it was initially created and the judicial decisions above referred to lay down the doctrine that the purchaser takes the property not free merely of all incumbrances that may have accrued upon the tenure by act of the defaulting proprietor, his representatives or assignees, but also free of the interest acquired by an adverse possessor who has been able to acquire such interest by the action of the defaulting proprietor. This doctrine is plainly limited in its application to cases where the adverse possession commenced after the creation of the *putni*. That in a case like the present in which the proprietor of the estate is out of possession he cannot merely by the device of the creation of a subordinate *taluk* arrest the effect of the adverse possession which has already commenced to run against him and such possession would be effective not only as against the subordinate tenure-holder but also as against the superior proprietor. That the plaintiff before he could succeed must prove that the proprietor was in possession when the *putni* was created. That the doctrine that possession follows title has no application to a case like the present. That as laid down by the Judicial Committee in *Runjeet Ram* v. *Gobordhan Ram, 20 W. R. 25, 29*, the Court may in the decision of the question of limitation

PUTNI—*concld.*

if there is conflicting evidence on both sides presume that possession was with the party whose title has been established but it does not follow that when the plaintiff has to establish possession at a particular point of time he is entitled to call upon the Court to presume that because his title has been established possession must be presumed to have been with the holder of the title at the specified period of time. This contention is clearly opposed to the decision of the Judicial Committee in *Mohima Chandra* v. *Mohesh Chandra, L. R. 16 I. A. 23 : s. c. I. L. R. 16 Calc. 473.* That the plaintiff having made his purchase at a sale held in execution of a rent-decree under the Bengal Tenancy Act under s. 159 of the Act he made his purchase with powers to annul the interests defined as encumbrance in s. 161; encumbrance as used in that section includes a statutory title acquired by a trespasser by adverse possession of the land of the defaulting tenure provided such act of possession commenced after the tenure had been created. That even if he had succeeded in establishing that such adverse possession commenced after the creation of the *putni taluk,* before he could succeed, he would have to prove that under sub-s. (*1*) of s. 167 he had annulled the encumbrances by service of notice within one year from the date of the sale or the date on which he first had notice of the encumbrance and in the present case the plaintiff had failed herein. *Held* (as to the contention that the grant of the *putni* tenure itself was evidence of possession), that the principle that ancient documents produced from proper custody and by which any right to property purports to have been exercised may rightly be treated as presumptive evidence of possession has no application to the circumstances of the present case. KALIKANUND MUKERJEE *v.* BIPRODAS PAL CHOUDRY (1914) **19 C. W. N. 18**

PUTNI REGULATION (VIII OF 1819).

——— s. 8—*Publication of notices at the Collector's kutchery—Notices taken down and kept on Nazir's table for inspection of Muktears during office hours—Irregularity vitiating sale—Publication of list of putnis in arrears, defaulters and arrears, in zamindar's kutchery, if sufficient—Publication in principal village —Sale in Collector's Court-room if public sale, when people prevented from coming in freely by chaprasis—Sale at an unusually early hour, if bad.* Where it appeared that applications for sales of *putnis* under Reg. VIII of 1819 and notices thereof used to be taken down from the notice-board on the verandah of the Collectorate by the Muktears during office hours and placed on the Nazir's table and hung up again on the board at the close of the day: *Held,* that there was no proper publication of the notices which were meant for the public and not for Muktears alone and it was an irregularity which vitiated the sale. The law contemplates their unobstructed presentation to the notice of the public. *Bejoy Chand Mahatap* v. *Atulya Charan Bose, I. L. R. 32 Calc. 953,* and *Sachi Nandan Dutta* v. *Bejoy Chand Mahatap, 11 C. W. N. 729,* referred to. Where instead of

PUTNI REGULATION (VIII OF 1819)—*contd.*

——— s. 8—*concld.*

similar notices a list of the defaulting mahals with the names of the defaulters and the amounts due was stuck up in the zamindar's *sadar kutchery,* there was a substantial compliance with the law. Where the notice required to be served in the mofussil was served in the *kutchery* of the *dar-putnidar* of three only out of six mauzas covered by the *putni,* this was good service when the *dar-putnidar's kutchery* was in the principal village of the defaulting tenure. The complaint that the public had not unobstructed access to the place of sale was made out when it appeared that though the sale was held in the Court-room of the Collector (and therefore in public *kutchery,* the Collector's chaprasis who were placed at the wicket gate to keep order did not allow many persons to enter to prevent overcrowding. A defaulter cannot impeach a sale as illegal merely on the ground that it took place earlier than usual; he may however be permitted to shew that he was misled to his prejudice by the deviation from the usual practice. Effect of irregularities in sales discussed. *Maharaja of Burdwan* v. *Tara Sundari Debi L. R. 10 I. A. 19 : s. c. I. L. R. 9 Calc. 619, 622,* and *Maharaja of Burdwan* v. *Krishna Kamini Dasi, L. R. 14 I. A. 30 : s. c. I. L. R. 14 Calc. 365,* referred to. RANJIT SINGHA *v.* JNANENDRA CH. SEN GUPTA (1915) **19 C. W. N. 963**

——— ss. 11, 15, 17, cl. (*3*), para. 2 and cl. (*5*), para. 3—*Sale under Putni Regulation after mortgagee's decree on mortgage of putni and zemindar's decree for antecedent arrears—Right to surplus sale-proceeds—Priority—First charge—Limitation.* There is nothing in the Putni Regulation contrary to the principle which underlies s. 65 of the Bengal Tenancy Act, the rent payable by the *putnidar* to the zemindar being under ss. 11 and 15 of the Regulation as under s. 65 a first charge on the tenure. Where a *putni* tenure is sold under the Regulation for the realisation, as the case may be, of arrears due for the year immediately expired or for the current year, the effect of such sale is not to reduce all former balances to personal debts of the *putnidar.* The charge is not destroyed, but is transferred to the surplus sale-proceeds. The sale in any case would not destroy the charge attaching to arrears in respect of which the zemindar has already obtained a decree prior to the sale, for the second paragraph to the third clause of s. 17 of the Regulation, even if it be opposed to the provisions of s. 65 of the Bengal Tenancy Act, has no application to such a case, for it cannot contemplate the institution of a fresh suit for recovery as a personal debt of antecedent balances in respect of which the zemindar had already obtained a decree. *Peary Mohan Mukerjee* v. *Sreeram Chandra Bose, 6 C. W. N. 794,* approved. *Jagannath* v. *Mohiuddin Mirza, I. L. R. 37 Calc. 747,* not approved. Where before the *putni* was sold under the Regulation both the zemindar and the mortgagee of the tenure had recovered decrees, the former for antecedent arrears and the latter on his mortgage. *Held,* that though

PUTNI REGULATION (VIII OF 1819)—*concld.*

——— s. 11—*concld.*

under s. 73 of the Transfer of Property Act the latter had a charge in respect of the mortgage dues upon the surplus sale-proceeds and this charge subsisted even after the decree, the charge in favour of the zemindar in respect of arrears of rent would have preference before it, as it was a first charge under s. 65 of the Bengal Tenancy Act. The zemindar was entitled to seek his remedy by way of suit in the Civil Court without repeated recourse to the summary procedure laid down in the Regulation. *Brindaban Ch. Sircar* v. *Brindaban Ch. Dey, L. R. 1 I. A. 178*: s. c. *13 B. L. R. 409*, referred to. *Quære*: Whether the limitation of two months provided by the fifth clause to s. 17 of the Regulation applies to a suit by the mortgagee against the zemindar for a declaration of his right to appropriate, in satisfaction of his own decree, the surplus sale-proceeds which the zemindar has taken out in execution of his decree for antecedent balances. BASANTA KUMAR BOSE *v.* KHULNA LOAN CO. (1914) **19 C. W. N. 1001**

R

RAILWAY COMPANY.

——— liability of—

See RAILWAYS ACT (IX OF 1890), s. 75. **I. L. R. 37 All. 463**

See REMAND **I. L. R. 42 Calc. 888**

1. ——— *Despatch of goods by railway—Risk-note H—Loss—Suit for damages—Onus of proof—"Complete packages," tins delivered but contents missing, if.* It is for the consignee of goods despatched by railway under a risk-note to prove that the case is within one of the exceptions provided in the note, *viz.*, wilful neglect of the company's servants or theft by or wilful neglect of its servants, transport agents or carriers employed by them; and in the absence of proof that the loss was caused by one of the risks undertaken by the owner, the Court is not bound to presume that the loss was due to one of the reasons covered by the exception. *Sheobarut Ram* v. *The Bengal and North-Western Railway Co., 16 C. W. N. 766*, followed. When the tins in which oil was despatched by railway were delivered, though the contents were missing: *Held*, that there was no loss of "complete packages" within the meaning of the note. EAST INDIAN RAILWAY CO. *v.* NILKANTA ROY (1913) . . . . **19 C. W. N. 95**

2. ——— *Contract Act (IX of 1872), ss. 151 and 152—Liability of Railway Companies for loss, damage or destruction of goods entrusted to them for carriage—Evidence necessary to exonerate Railway Company when the true cause of the loss, etc., cannot be ascertained—Provision of appliances to put out fires.* *H* sued the B., B. & C. I. Railway Company for the value of certain bales

RAILWAY COMPANY—*contd.*

of cotton entrusted to the railway company for carriage and accidentally burnt while being so carried. *Held*, that the railway company, merely by getting the Court to believe that the wagon on which the goods entrusted to it had been loaded had been so loaded with ordinary care, had not done all that was needed to absolve itself, but that in the absence of a definite known cause the railway company had to satisfy the Court that in the management of its engines, and in the whole course of drawing the wagon to the place where it caught fire, the railway company observed in all respects the same degree of care and prudence which an ordinary man conveying his own valuable goods might have been expected to take under the same circumstances. When anyone has entrusted goods to a railway company for carriage, and those goods are lost, damaged or destroyed while in the possession and under the control of the railway company, the fact of the loss, damage or destruction is enough to cast upon the company the burden of proving that that loss was not due to any negligence on its part. The standard of negligence is given in ss. 151 and 152 of the Indian Contract Act but no general rule universally applicable can be laid down as a rule of law defining the amount and quality of the proof in every case which will discharge the railway company's onus. *Lakhichand Ramchand* v. *G. I. P. Railway Company, I. L. R. 37 Bom. 1*, is an authority for the proposition that a decree ought not to be given against a railway company sued as bailee for loss, damage or destruction of goods bailed to it, the moment it admits that it is unable to assign the *vera causa* of the loss. The company as bailee is primarily liable for the loss, but it may exonerate itself in two ways. It may, while ignorant of the cause of the fire, show, if it can, that that cause could not possibly be attributable to itself, that in other words it was altogether external and beyond the railway company's control. Second, the bailee, while ignorant of the *vera causa*, might point to the fact that he had taken such precautions against risk, had dealt with the goods entrusted to him with such care, that whatever the cause might be and although attributable to his own act, yet it must be presumed to have been of such an uncommon, or of such an unpreventable kind that he ought not to be held responsible for it. But such a defence could only be logically (if ever logically) established by the virtual exclusion of all causes of an ordinary kind attributable to the bailee or his servants or machinery. HIRJI KHETSEY & COMPANY *v.* B., B. & C. I. RAILWAY COMPANY (1914) . . **I. L. R. 39 Bom. 191**

3. ——— *Common carrier—Negligence—Railway Company if may free itself from liability by contract—Statutory limits imposed on such contract—Duty of care, apart from contract and excluded by it, if arises—Contract through agent or person held out as such—Agent not caring to acquaint himself with terms printed on ticket—Principal if bound by terms—Jury—Fact, finding of—Legal consequences flowing therefrom.* Apart from statute, a carrier is liable in Canada, as in England

RAILWAY COMPANY—*contd.*

for injury arising from negligence in the execution of his contract to carry unless he has effectively stipulated that he shall be free from such liability. Under s. 284 of the Canada Railways Act, railway companies are put under a general obligation to carry and deliver with due care and diligence, and any one aggrieved by a breach of this duty is to have a right of action from which the companies are not to be relieved by any notice, condition or declaration if the damage arises from negligence or omission. S. 340 of the Act provides that no contract restricting liability for carriage is to be valid unless it is of a kind approved by the Railway Board, which is empowered to determine the extent to which such liability may be impaired, restricted, or limited, and generally to prescribe by regulation the terms and conditions under which any traffic may be carried. *Held*, that where under s. 340 and other sections which deal with special tariffs, forms of stipulation limiting liability have been approved by the Board, and the conditions for making them binding have been duly complied with, the companies are enabled in such cases to contract for complete freedom from liability for negligence. If a passenger has entered a train on a mere invitation or permission from a railway company without more and he receives injury in an accident caused by the negligence of its servants, the company is liable for damages for breach of a general duty to exercise care. Such a breach can be regarded as one either of an implied contract or of a duty imposed by the general law, and in the latter case is in form a tort. But in either view this general duty may, subject to statutory restrictions, be superseded by a specific contract which may either enlarge, diminish or exclude it. If the law authorises it, such a contract cannot be pronounced to be unreasonable by a Court of Justice. The specific contract, with its incidents, either expressed or attached by law, becomes in such a case the only measure of the duties between the parties. If the contract is one which deprives the passenger of the benefit of a duty of care which he is *primâ facie* entitled to expect that the company has accepted, the latter must discharge the burden of proving that the passenger assented to the special terms imposed. This he may be shown to have done either in person or through the agency of another. Such agency will be held to have been established when he is shown to have authorised antecedently or by way of ratification the making of the contract under circumstances in which he must be taken to have left everything to his agent. In such a case, it is sufficient to prove that he has been content to accept the risk of allowing terms to be made without taking the trouble to learn what was being agreed to. The company may infer his intention from his conduct. If he stands by under such circumstances that it will naturally conclude that he has left the negotiation to the person who is acting for him, and intends that the latter should arrange the terms on which he is to be conveyed, he will be precluded by so doing from afterwards alleging want of authority

RAILWAY COMPANY—*concld.*

to make any such terms as the law allows. If the person acting on his behalf has himself not taken the trouble to read the terms of the contract proposed by the company in the ticket or pass offered and yet knew that there was something written or printed on it which might contain conditions, it is not the company that will suffer by the agent's want of care. The agent will, in the absence of something misleading done by the company, be bound, and the principal will be bound through him. The company owes the passenger no duty which the contract is expressed on the face of it to exclude, and if he has approbated that contract by travelling under it, he cannot afterwards reprobate it by claiming a right inconsistent with it. GRAND TRUNK RAILWAY COMPANCY OF CANADA *v.* ALBERT NELSON ROBINSON (1915).

19 C. W. N. 905

RAILWAY RECEIPT.

See RAILWAYS ACT (IX OF 1890), S. 72.

I. L. R. 39 Bom. 485

——— *Mercantile document of title, pledge of—Local custom—Charge—Holder thereof—Provincial Insolvency Act (III of 1907), s. 16, cl. (3).* A railway receipt is a mercantile document of title to goods and lawful possession as pledgee of such receipt enables the holder by virtue of local custom to get possession of the goods from the carrier, and the insolvents' right to get possession under s. 16, cl. (*3*), of the Provincial Insolvency Act (III of 1907) ceases with the pledge. *Amarchand & Co.* v. *Ramdas, 15 Bom. L. R. 890*, followed. FAKEERAPPA *v.* THIPPANNA (1913).

I. L. R. 38 Mad. 664

RAILWAY RULE.

See RAILWAYS ACT. (IX OF 1890), S. 72.

I. L. R. 39 Bom. 485

RAILWAYS ACT (IX OF 1890).

——— **s. 72**—*Rule 2 made under s. 47, sub s. (1), clause (f)— Rule not valid—Delivery of goods to be carried by Railway Administration—Grant of railway receipt not essential to complete delivery.* The plaintiffs brought certain goods to the railway premises and handed a consignment note to the clerk of the railway company. No receipt was given as the goods were not weighed and loaded. In the meanwhile, a fire broke out on the premises and destroyed the goods. The plaintiffs having sued the railway company for the loss of goods, the lower Court held that the company was not liable for the loss in absence of a railway receipt, as provided for in r. 2 framed under s. 47, sub-s. (*1*), clause (*f*) of the Indian Railways Act (IX of 1890). On plaintiffs' application under Extraordinary Jurisdiction: *Held*, that the commencement of the liability of the company for goods delivered to be carried under s. 72 was in no way dependent upon the fact of a receipt having been granted, but must be determined on evidence quite independently of r. 2 under s. 47, sub-s. (*1*), clause (*f*) of the Indian Railways Act (IX of 1890). *Held*, also, that inasmuch as r. 2 sought

RAILWAYS ACT (IX OF 1890)—*contd.*

——— **s. 72**—*concld.*

to define and by defining changed what would otherwise be the meaning of s. 72 of the Act the rule was bad. *Per* HEATON, J. "A 'delivery to be carried by railway' (within the meaning of s. 72 of the Indian Railways Act, 1890) means something more than a mere depositing of goods on the railway premises; it means some sort of acceptance by the railway; a taking as well as a giving. When that taking occurs is a matter which depends on the course of business and the facts of each particular case; but it certainly may be completed before a railway receipt is granted." *Per* SHAH, J. "The delivery contemplated by s. 72 is an actual delivery and marks the beginning of the company's responsibility. That delivery would no doubt involve not merely the bringing of the goods on the railway premises but acceptance thereof by the company for the purpose of carrying the same by railway. Such acceptance may be expressed or implied in a variety of ways by the usual course of business, and may be quite independent of any receipt being granted by the company. Of course it will depend upon the circumstances of each case and the usual course of business of the Railway administration as to whether the goods can be said to be delivered to be carried by railway under s. 72 of the Act." RAMCHANDRA NATHA *v.* G. I. P. RAILWAY COMPANY (1915)

I. L. R. 39 Bom. 485

——— **s. 75**—

See REMAND. **I. L. R. 42 Calc. 888**

———*Articles of special value lost in transit—Liability of Railway Company for the loss thereof.* The plaintiff who was a passenger on the defendant railway booked three packages from Howrah to Khurja. One of them contained silver and silk articles of the description mentioned in the second schedule to the Indian Railways Act as articles which must be declared, but the plaintiff did not do so. The package was lost and the plaintiff brought this suit for damages. *Held*, that s. 75 of Act IX of 1890 is one of general applicability to all classes of goods; and inasmuch as the plaintiff did not declare the contents of his trunk that was lost in transit the Railway administration was freed from all liability for the loss thereof, both as regards scheduled and non-scheduled articles contained therein. EAST INDIAN RAILWAY CO. *v.* N. K. ROY (1915).

I. L. R. 37 All. 463

——— **s. 77**—*Notice of suit to Agent—Notice to Goods Superintendent if sufficient—Power of Goods Superintendent to make promises binding on Company.* Where the plaintiff who were consignors of some bags of mustard seed denied that ten bags offered by the defendant company were his and the trying Court found that the bags despatched by the plaintiff were lost or missing: *Held*, that in the circumstances the plaintiff was bound to serve notice under s. 77 of the Indian Railways Act upon the Agent of the defendant company. A notice given to the Goods Superintendent which there was no evidence to show ever reached the Agent was not sufficient. *Woods* v. *Meher Ali Bepari, 13 C. W. N. 24*, distinguished and doubted. *Janaki Das* v. *The Bengal Nagpur Railway Company, 16 C. W. N. 356, East Indian Railway Co.* v. *Babu Madho Lal, 17 C. W. N. 1134*, approved. The company cannot be bound by any admission or statement by the Goods Superintendent such as is implied in a promise made before the suit to pay a liquidated sum to the plaintiff for the value of the missing bags. RADHA KISHEN *v.* THE EAST INDIAN RAILWAY CO. (1913). . . . **19 C. W. N. 62**

RAPE.

See PENAL CODE ACT (XLV OF 1860), SS. 32 AND 83. **I. L. R. 37 All. 187**

RATEABLE DISTRIBUTION.

1. ——— *Practice and Procedure—Decree—Civil Procedure Code (Act V of 1908), ss. 47, 73—Civil Procedure Code (Act XI of 1882), s. 295—Appeal.* An order refusing rateable distribution made under s. 73 of the Code of Civil Procedure (Act V of 1908), between two rival decree-holders, which does not affect or interest the judgment-debtor, is an *order* in execution proceedings but is not a *decree*, as all the conditions enumerated in s. 47 of that Code are not present, and consequently is not appealable. *Jagadish Chandra Shaha* v. *Kripanath Shaha, I. L. R. 36 Calc. 130*, followed. *Sorabjit Coovarji* v. *Kala Raghunath, I. L. R. 36 Bom. 156*, distinguished. It is essential for the application of s. 73 of the Code of Civil Procedure that the decree should have been passed against the same judgment-debtor. BALMER LAWRIE & Co. *v.* JADUNATH BANERJEE (1914). . . **I. L. R. 42 Calc. 1**

2. ——— *Rival decree-holders—Right of one to impeach another's decree only in suit and not in execution—Civil Procedure Code (Act V of 1908), s. 73, applicability of—O. XXI, r. 52, enquiry under.* Where several decree-holders against the same judgment-debtor apply for satisfaction of their decrees out of the same fund, any one of them is entitled to show that his rival's decree is a fraudulent or sham one but it is not open for him to do so in execution proceedings. *Sudindra* v. *Budan, I. L. R. 9 Mad. 80*, followed. S. 73, Civil Procedure Code, is applicable only if an application for *execution* of the decree in the prescribed form had already been made *before* the receipt of the assets and the fund out of which rateable distribution is asked for is one *realised* in execution. Where holders of decree of several courts apply for satisfaction of their decrees, out of a fund in the custody of a court, the proper order governing their respective titles or priorities is O. XXI, r. 52, Civil Procedure Code; and they are entitled to share it rateably as in the case of administration of the estate of a deceased person or of an insolvent as attachment does not under the present law give any priority to

RATEABLE DISTRIBUTION—*concld.*

the first attaching creditor, but only prevent alienation. *Soobul Chunder Law* v. *Russick Lal Mitter, I. L. R. 15 Calc. 202, 209,* followed. The shares due to holders of decrees of other courts than the one which has the custody of the fund are to be distributed only according to the orders of those courts. KATUM SAHIBA *v.* HAJEE MAHOMED BADSHA SAHIB (1913) . **I. L. R. 38 Mad. 221**

RATES AND TAXES.

——————— *Arrears of—Consolidated rate—Charge—Calcutta Municipal Act (Beng. III of 1899), ss. 223, 228—Arrear of consolidated rates, whether a first charge on the land and building in respect of which it has accrued due—Charge and mortgage, distinction between—Transfer of Property Act (IV of 1882), ss. 55, 58, 100—Bengal Tenancy Act (VIII of 1885), s. 171—Constructive notice—Bonâ fide purchaser for value without notice* S. 228 of the Calcutta Municipal Act is not controlled by s. 223 thereof, and makes the consolidated rate, as it accrues due from time to time a first charge on the premises (subject only to arrears of land revenue). A mortgage does, whereas a charge does not, involve a transfer of an interest in specific immoveable property. *Narayana* v. *Venkataramana, I. L. R. 25 Mad. 220, Tancred* v *Delagoa Bay Co., 23 Q. B. D. 239, Burlinson* v. *Hall, 12 Q. B. D. 347,* referred to. Such a charge cannot be enforced against the property in the hands of a *bonâ fide* purchaser for value without notice. *Kishen Lal* v. *Gunga Ram, I. L. R. 13 All. 28,* referred to. The plea of purchaser for value without notice is a single defence, the onus of proving which is on the defendant. *Attorney-General* v. *Biphosphated Guano Co., 11 Ch. D. 327, Wilkes* v. *Spooner,* [1911] *2 K. B. 473,* followed. Where property with such a charge is foreclosed, by the mortgagee, constructive notice cannot be imputed to him to the same extent as to a purchaser at a private sale. *Radha Madhab* v. *Kalpataru, 17 C. L. J. 209, Brahma* v. *Bholi Das, 19 C. L. J. 352,* referred to. Still he should ascertain the true state of affairs before he becomes full owner thereof. Although a purchaser without notice from a person who had notice, is protected [*vide Harrison* v. *Forth,* (1695) *Finch's Prec. Ch. 51*] here, purchasers from such a mortgagee cannot claim the protection as, before they acquire title, they might by enquiry from the municipal authorities ascertain the precise period for which the rates were in arrears. AKHOY KUMAR BANERJEE *v.* CORPORATION OF CALCUTTA (1914) **I. L. R. 42 Calc. 625**

RATIFICATION.

See MADRAS IRRIGATION CESS ACT (VII OF 1865), S. 1. . **I. L. R. 38 Mad. 997**

See TRADING WITH THE ENEMY **I. L. R. 42 Calc. 1094**

RECEIPT.

——————— *Registration—Waiver—Evidence—Registration Act (III of 1877), s. 17 (n)—Mortgage-bond—Receipt showing simple interest charged—Evidence Act (I of 1872), s. 92.* A receipt, which purports to show that simple and not compound interest was to be charged (though the mortgage-bond contained provision for the payment of compound interest), is admissible in evidence. Such a receipt operates as a full acquittance for the money paid and requires no registration. *Jiwan Ali Beg* v. *Basa Mal, I. L. R. 9 All.* 108, followed. KAILASH CHANDRA NATH v. SHEIKH CHHENU (1914). **I. L. R. 42 Calc. 546**

RECEIVER.

See INSOLVENCY. **I. L. R. 42 Calc. 289**

See OFFICIAL RECEIVER.

1. ——————— *Empowered by Court to sell and convey property in partition suit, including infant's share—Code of Civil Procedure (Act V of 1908), O. XL, r. 1, cl. (d)—Indian Trustees Act (XXV of 1866), ss. 8, 20, 32.* In a partition suit in which a receiver is authorised to sell properties including the share of an infant as declared in the decree, the Court may direct the receiver to convey the properties. Under O. XL, r. 1, cl. (*d*) of the Code of Civil Procedure (Act V of 1908), the Court may confer on a receiver all such powers for the realization of properties and the execution of documents as the owner has. BASIR ALI *v.* HAFIZ NAZIR ALI (1915). . **19 C. W. N. 817**

2. ——————— *Suit by, for possession of immoveable property.* The plaintiffs were the receivers of the estate of one *G* who died leaving two widows *K* and *N*. On the 8th August, 1906, one of the co-widows (*N*) brought a suit for a declaration that she was entitled to a half share in the estate of *G* and prayed that the properties might be partitioned and her share allotted to her. In this suit, the plaintiffs were appointed receivers with all the powers provided under O. XL, r. 1, cl. (*d*) of the Civil Procedure Code. It was further ordered that the receivers should have power to bring and defend suits in their own name and also should have power to use the names of the plaintiff and the defendant. The plaintiffs instituted the present suit to recover possession of a certain immoveable property and for a declaration that a lease, dated 16th September, 1906, purporting to have been executed by *N* by virtue of which the defendant claimed to be a permanent tenant was void and inoperative. Subsequent to the institution of the present suit an order was made in the suit in which the plaintiffs were appointed receivers that the plaintiffs as receivers be at liberty to continue the present suit. It appeared that proceedings under the Lunacy Act were instituted in November, 1906, and in these proceedings the District Judge on the 24th September, 1907, held that *N* was of unsound mind and incapable of managing her affairs: *Held,* that ordinarily a suit to recover possession of property can only be brought by him in whom there is a present title to it and by his appointment no property becomes vested in a receiver. But this rule like all others is subject to modification by the legislature and the Code of Civil Procedure, in O. XL,

RECEIVER—*concld.*

r. 1, empowers the Court to confer upon a receiver all such powers as to bringing and defending suits as the owner himself has. That the co-widows of *G* were the present owners of the property and the suit in which the receivers had been appointed comprised that property. The receivers therefore were as competent to bring the present suit as the owners would have been. That the omission of the plaintiffs to get leave, in the suit in which they were appointed receivers to institute the present suit may have consequences adverse to them in that suit, but it cannot affect their power to bring the present suit. CASSIM MAMOOJI *v.* K. B. DUTT AND P. CHAUDHURI (1914) **19 C. W. N. 45**

RECEIVER IN INSOLVENCY.

See MINOR . **I. L. R. 42 Calc. 225**

RECEIVER'S REPORT.

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 43. **I. L. R. 37 All. 429**

RECIPROCAL PROMISES.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3. **I. L. R. 38 Mad. 959**

RECORD.

——— **procedure when, lost—**

See JUDGMENT. **I. L. R. 38 Mad. 498**

RECORD OF RIGHTS.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195 (*1*), (*c*). **I. L. R. 39 Bom. 310**

REDEMPTION.

See MORTGAGE . **I. L. R. 37 All. 634**

See REDEMPTION SUIT.

——— **suit for—**

See CIVIL PROCEDURE CODE (ACT V 1908), SS. 11, 47. **I. L. R. 39 Bom. 41**

See COMPROMISE. **I. L. R. 42 Calc. 801**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 13. **I. L. R. 39 Bom. 587**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 13, 15D, 16. **I. L. R. 39 Bom. 73**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 60 AND 91. **I. L. R. 38 Mad. 310**

RE-ENTRY.

——— **right of—**

See LESSOR AND LESSEE. **I. L. R. 38 Mad. 445**

REFERENCE.

See PRACTICE. **I. L. R. 42 Calc. 819**

REFERENCE—*concld.*

——— *Jury trials—Power of Judge to refer the case of an accused as to whom he agrees with the verdict—Legality of procedure—Criminal Procedure Code (Act V of 1898), s. 307 (2)—Confessions of co-accused—Corroboration—Sufficiency of circumstances raising a mere suspicion.* S. 307 (*2*) of the Criminal Procedure Code contemplates a reference only in the case of those accused as to whom the Judge declines to accept the verdict of the Jury. When he agrees with them in respect of any particular accused he ought to acquit or convict and sentence the latter as the case may be. Confessions of the co-accused can be taken into consideration, but the Court requires corroboration before acting on them. EMPEROR *v.* BABAR ALI GAZI (1914). **I. L. R. 42 Calc. 789**

REFUND.

See UNDUE INFLUENCE. **I. L. R. 42 Calc. 286**

REGISTER OF BIRTH.

——— **admissibility of, as evidence—**

See HINDU LAW—MINOR. **I. L. R. 38 Mad. 166**

REGISTRATION.

See PROVIDENT INSURANCE. **I. L. R. 42 Calc. 300**

See RECEIPT. **I. L. R. 42 Calc. 546**

See REGISTRATION ACTS.

——— *Family settlement—Distribution of family property carried out by means of mutation proceedings—Hindu law—Joint Hindu family—Representative capacity of father.* The members of a Hindu family, one of whom was a minor, entered into a compromise concerning the partition of certain property in the course of mutation proceedings, and the partition agreed to was carried into effect by these proceedings. *Held*, that, inasmuch as the minor was represented by his father and there was no evidence or fraud of collusion, the compromise was binding on him. *Held*, also, that the compromise did not require registration. *Kokla* v. *Piari Lal, I. L. R. 35 All. 502*, referred to. DAYA SHANKAR *v.* HUB LAL (1914) . . **I. L. R. 37 All. 105**

REGISTRATION ACT (III OF 1877).

——— **s. 17 (n)—**

See RECEIPT. **I. L. R. 42 Calc. 546**

——— **s. 17 (*1*), (b) and (d)**—*Lease of palmyra juice—Whether lease of immoveable property.* Where a document stated that the lessee had "taken for lease for two years, the palmyra trees" in a certain garden and . . . "that he would not cut the leaves of any of the trees on which he climbed except those whose leaves had to be cut." *Held*, that it was not a lease of immoveable property and that the interest conveyed by it, was not, for the purposes of the Registration Act, an interest in immoveable property. *Sukry Kurdeppa* v. *Goondakull Nagireddi, 6 Mad H. C. 71*, and

REGISTRATION ACT (III OF 1877)—*contd*

——— **s. 17**—*contd.*

Seeni Chettiar v. *Santhanathan Chettiar, I. L. R. 20 Mad. 58*, explained and distinguished. NATESA *v.* TANGAVELU (1914). **I. L. R. 38 Mad. 883**

——— **s. 17, cls. (d), (h), (i)**—*Agreement to grant permanent lease of property not subject of suit, embodied in petition of compromise—Agreement part of consideration of compromise—Decree passed on petition—Specific performance, suit for—Admissibility of petition and decree to prove agreement—Petition, if agreement for lease. Per* MOOKERJEE, J. Although an agreement in writing, which does not operate as a present demise, but is only an agreement for a lease, is (having regard to the extended significance of the term lease as defined in s. 3 of the Registration Act) required to be registered if the term exceeds one year, and the exemptions provided in cls. (*h*) and (*i*) to s. 17 do not apply to leases or agreements for leases, s. 49 of the Act does not preclude its being received as evidence of any transaction not affecting such property. Such a document can therefore be proved by the plaintiff in a suit for specific performance of the agreement to grant the lease. *Konduri* v. *Gottumukkala, 17 Mad. L. J. 218, Satyendra Nath Bose* v. *Anil Chandra Ghosh, 14 C. W. N. 66, Sarat Chandra Ghose* v. *Shyamchand Singh, I. L. R. 39 Calc. 663*, relied on. *Hurjivan* v. *Jamsetji, I. L. R. 9 Bom. 63*, and *Purnanand Das* v. *Dharsey, I. L. R. 10 Bom. 101*, not followed. Where in a suit for recovery of property *A*, the parties entered into a compromise and in a petition to the Court recited the fact *inter alia* that plaintiff had agreed to grant a permanent lease of property B to the defendant on certain terms and the Court recorded the compromise in full and made a decree in these terms: "The suit be decreed in terms of the compromise filed by both parties," in a suit for specific enforcement of the agreement embodied in the compromise petition: *Held, per* MOOKERJEE J. That the agreement for lease embodied in the petition was admissible in evidence to prove the contract to grant the lease. *Per* BEACHCROFT J. That the petition simply amounted to a statement to Court that the parties had come to certain terms accompanied by a prayer for a decree on those terms. It in itself was not an agreement to lease. That the promise to grant a lease of property *B* was part of the consideration for the agreement arrived at concerning property *A*, and the Court in its decree was bound to record the whole of the terms of the compromise, and the decree, though it was final only so far as it related to the subject-matter of the suit, was admissible in evidence to prove the promise to grant a lease of property B. Documents referred to in cls. (*e*) to (*n*) of s. 17 of the Registration Act are excepted from the provisions of cls. (*b*) and (*c*), and not from those of cls. (*a*) and (*d*), because those documents come within the description of documents in cls. (*b*) and (*c*) and not within the description of documents in cls. (*a*) and (*d*). HEMANTA KUMARI DEBI *v.* MIDNAPUR ZEMINDARI CO. (1914) **19 C. W. N. 347**

REGISTRATION ACT (III OF 1877)—*concld.*

——— **s. 17**—*concld.*

——— **ss. 32 to 35**—*Presentation of documents for registration—Registration, if document is presented by an unauthorised person, not valid—Jurisdiction of Registering Officer to register document—Admission of execution by executant of deed, effect of, on registration—Prevention of fraud, object of s. 32 to 35—Duty of Courts not to allow defect of provisions of Act.* Ss. 32 and 33 of the Registration Act (III of 1877) relating to the presentation of documents for registration, are imperative, and their provisions must be strictly followed and where it was proved that agents who presented deeds of mortgage for registration had not been duly authorized in the manner prescribed by the Act to present them, the deeds were held not to be validly registered, so as (under s. 49) to affect immoveable property or to be received in evidence of any transactions affecting such property; or under s. 59 of the Transfer of Property Act (IV of 1882) to be effective as mortgages. A Registrar or Sub-Registrar has no jurisdiction to register a document unless he is moved to do so by a person who has executed or claims under it or by the representative or assign of such person or by an agent of such person, representative or assign duly authorized by a power of attorney executed and authenticated in the manner prescribed by s. 33 of the Act. Executants of a deed who attend a Registering Officer to admit execution of it cannot be treated for the purposes of s. 32 of the Act as presenting the deed for registration. They would no doubt be assenting to the registration, but that would not be sufficient to give the Registering Officer jurisdiction. One object of ss. 32 to 35. Registration Act, III of 1877, was to make it difficult for persons to commit frauds by means of registration under the Act; and it is the duty of the Courts in India not to allow the imperative provisions of the Act to be defeated. *Ishri Prasad* v. *Baijnath, I. L. R. 28 All. 707* and the principle laid down in *Mujib-un-nissa* v. *Abdur Rahim, I. L. R. 23 All. 233; L. R. 28 I. A. 15*, followed. JAMBU PRASAD *v.* MUHAMMAD AFTAB ALI KHAN (1914) **I. L. R. 37 All. 49**

REGISTRATION ACT (XVI OF 1908).

——— **s. 17**—*Memorandum of arrangement between lessor and lessee, if must be stamped and registered.* A document, dated the 8th March, 1885, which did not demise any property and was neither a lease nor an agreement to lease, but was and purported to be a memorandum of an arrangement which had been made with the grantees by the agent of the lessors on their behalf and under which the grantees had taken possession with effect from 12th April, 1884, was admissible in evidence although neither stamped nor registered. KATYAYANI DEBI *v.* PORT CANNING AND LAND IMPROVEMENT CO. (1914) **19 C. W. N. 56**

REGISTRATION ACT (XVI OF 1908)—*concld.*

——— s. 47—

See AGRA TENANCY ACT (II OF 1901), S. 97. **I. L. R. 37 All. 59**

——— s. 77—

See LIMITATION. **I. L. R. 38 Mad. 291**

REGULATION I OF 1793.

——— s. 8, cl. (*4*)—

See CHAUKIDARI CHAKRAN LANDS. **I. L. R. 42 Calc. 710**

REGULATION V OF 1886 (AJMERE MUNICIPALITIES).

——— ss. 85, 141—*Municipal Board—Powers of Board in respect of erection of buildings—Suit against Municipal Board—Jurisdiction.* One Kifayat-ullah served the Municipal Board of Ajmere with notice of his intention to rebuild a certain wall. He received no reply to his notice within a month, and thereafter commenced to build. The Municipal Board then required him to stop the building and submit a fresh application. The applicant stopped the building but did not present a fresh application, and some months later sued the Board for damages on account of the stoppage of the building. The Board failed to prove that the notice first given by Kifayat-ullah was not in accordance with law. *Held*, that in the circumstances the original notice must be considered as a good notice under s. 85 of the Ajmere Regulation, I of 1877, and that s. 140 of the Regulation, if it applied at all, did not oust the jurisdiction of the Civil Court to try the suit for damages.. MUNICIPAL BOARD OF AJMERE *v.* KIFAYAT-ULLAH (1915) . . **I. L. R. 37 All. 220**

REGULATION XI OF 1825.

See FISHERY. **I. L. R. 42 Calc. 489**

REGULATION XII OF 1805.

——— s. 33—

See CHAUKIDARI CHAKRAN LANDS. **I. L. R. 42 Calc. 710**

REGULATION XIII OF 1805.

——— s. 41—

See CHAUKIDARI CHAKRAN LANDS. **I. L. R. 42 Calc. 710**

REGULATION XXXVII OF 1793.

——— s. 15—

See JAIGIR . **I. L. R. 42 Calc. 305**

RELEASE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3. **I. L. R. 38 Mad. 959**

RELIGIOUS ENDOWMENT.

See HINDU LAW **I. L. R. 42 Calc. 536**

RELIGIOUS ENDOWMENTS ACT (XX OF 1863).

——— s. 3—*Temple falling under—Power of Temple Committee to appoint additional trustees in good faith and in the interest of the temple—Onus of proving bad faith, on person challenging the appointment.* For the better management of a certain Hindu temple which had no settled scheme of management and which was governed by s. 3 of the Religious Endowments Act (XX of 1863) a Temple Committee appointed two trustees in addition to the three then existing. *Held*, (*a*) that the committee had power to appoint the additional trustees in virtue of their general power of superintendence over temples committed to their care as successors to the Board of Revenue, who had such power under s. 2 of Regulation VII of 1817, (*b*) that this power must be exercised reasonably and in good faith, in the interests of the temple, (*c*) that the *onus* of proving that it did not excercise this power "Reasonably and in good faith" lay not on the committee but on the person challenging the appointment of additional trustees, *e.g.*, on the already existing trustee, as in this case, who sued to set aside the additional appointments, and (*d*) that the power of appointing new trustees was not confined to filling up vancancies alone, but extended to creating additional trustees. *Sheik Davud Saiba* v. *Hussein Saiba, I. L. R. 17 Mad. 212*, referred to. *Venkatachalla Pillai* v. *The Taluk Board, Saidapet, I. L. R. 34 Mad. 375, Nilayathakshi Ammal* v. *The Taluk Board of Mayavaram, I. L. R. 34 Mad. 333; s. c. 20 Mad. L. J. 885*, and *Ganapathi Ayyar* v. *Sri Vedavyasa Alasinga Bhattar, I. L. R. 29 Mad. 534*, distinguished. THIRUVENGADATHAIYANGAR *v.* PONNAPPIENGAR (1914). **I. L. R. 38 Mad. 1176**

——— s. 10—*Temple Committee—Vacancy—District Judge—Court—Persona designata—Civil Procedure Code (Act V of 1908), s. 115.* An order made by a District Court under s. 10 of the Religious Endowments Act is an order revisable by the High Court under s. 115, Civil Procedure Code (Act V of 1908). *Meenakshi* v. *Subramanya, I. L. R. 11 Mad. 26*, distinguished. *Gopala Ayyar* v. *Arunachallam Chetty, I. L. R. 26 Mad. 85*, referred to. When a Temple Committee does not do its duty, and arrange for an election, the Court can make the appointment without reference to the committee or direct the remaining members of the committee to fill up a vacancy. The power of the committee in such a case being derived from the Court, an appointment by election thereafter is bad. *Ramanuja Iyengar* v. *Ananta-raman Iyer, 6 Mad. L. J. 1*, dissented from. VASUDEVA AIYAR *v.* THE NEGAPATAM DEVASTHANAM COMMITTEE (1913). **I. L. R. 38 Mad. 594**

——— ss. 14 and 18—*Sanction to two persons jointly—Whether suit by one competent.* Where sanction to sue is given to two persons under s. 18 of the Religious Endowments Act, one of them cannot sue alone. *Mahomed Athar* v. *Ramjan Khan, I. L. R. 34 Calc. 587*, explained. Sanction granted under s. 18 of the Act is a condition precedent to the exercise of the right of suit. *Venkateswara,*

RELIGIOUS ENDOWMENTS ACT (XX OF 1863)—*concld*

———— **s. 14**—*concld.*

In re, I. L. R. 10 Mad. 98, referred to. It has to be construed strictly without enlarging its scope. *Sayad Hussein Miyan* v. *Collector of Kaira, I. L. R. 21 Bom. 257*, referred to. S. 14 of the Act commented on. VENKATESHA MALIA *v.* RAMAYA HEGADE (1914)
I. L. R. 38 Mad. 1192

RELINQUISHMENT.

See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881) . . **I. L. R. 37 All. 444**

See UNDER-RAIYATI HOLDING.
I. L. R. 42 Calc. 751

REMAND.

See PENSIONS ACT (XXIII OF 1871), s. 6.
I. L. R. 39 Bom. 352

———— *New case—Second appeal—Finding of fact—High Court, power of—Silk—Railway Company, liability of—Railways Act (IX of 1890), s. 75—Practice.* A new case cannot be made on behalf of the plaintiff on remand. After there has been a decision of fact in the two Courts of original and first appellate jurisdiction, the High Court cannot entertain a second appeal upon any question as to the soundness of findings of fact by the lower Appellate Court. If there is evidence to be considered the decision of the second Court, however unsatisfactory it might be, when examined, must stand final. *Ramratan Sukal* v. *Nandu, I. L. R. 19 Calc. 249*, referred to. The question whether silk in manufactured or unmanufactured state is to be treated as silk is a question of fact. *Brunt* v. *Midland Railway Company, 33 Exch. 187, Hiatunnissa* v. *Kailash Chandra Saha, 16 C. L. J. 259, Lakhmidas Hira Chand* v. *The Great Indian Peninsula Railway, 4 Bom. H. C. 129, Shaminadha Mudali* v. *The South Indian Railway Company, I. L. R. 6 Mad. 420, Pundalik Udaji Jadhav* v. *S. M. Railway Co., I. L. R. 33 Bom. 703*, referred to. EAST INDIAN RAILWAY COMPANY *v.* CHANGAI KHAN (1915) . **I. L. R. 42 Calc. 888**

REMAND ORDER.

See PRIVY COUNCIL, APPEAL TO.
I. L. R. 38 Mad. 509

RENT.

See STAMP ACT (II OF 1899), s. 59, SCH. 1, ART. 35, CL. (*a*), SUB. CL. (*iii*).
I. L. R. 39 Bom. 434

———— **distraint for—**

See MADRAS ESTATES LAND ACT (I OF 1908), s. 52 (2).
I. L. R. 38 Mad. 1140

———— **fixation of—**

See Agra Tenancy Act (II of 1901), s. 95.
I. L. R. 37 All. 12

RENT—*concld.*

———— **forfeiture, for non-payment of—**

See Lessor and Lesee
I. L. R. 38 Mad. 445

———— **suit for—**

See HOMESTEAD LAND.
I. L. R. 42 Calc. 638

See LIMITATION. **I. L. R. 38 Mad. 101**

———— **suit for, by lessee—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 10. **I. L. R. 38 Mad. 867**

———— **suit for, in Revenue Court—**

See MADRAS ESTATES LAND ACT (I OF 1908) . . **I. L. R. 38 Mad. 33**

RENT ROLL.

———— **certified extracts of—**

See BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876), ss. 30, 35, 39, 40.
I. L. R. 39 Bom. 664

RESCUE FROM LAWFUL CUSTODY.

See WARRANT, VALIDITY OF.
I. L. R. 42 Calc. 708

RESIDUARY CLAUSE.

See WILL . **I. L. R. 38 Mad. 1096**

RES JUDICATA.

See AGRA TENANCY Act (II of 1901), ss. 4 AND 19 . **I. L. R. 37 All. 280**

See AGRA TENANCY ACT (II OF 1901), s 95 . . **I. L. R. 37 All. 223**

See AGRA TENANCY ACT (II OF 1901), ss. 95 AND 167. **I. L. R. 37 All. 41**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 . **I. L. R. 39 Bom. 29**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11, EXPL. IV, O. II, R. 2.
I. L. R. 39 Bom. 138

See CIVIL PROCEDURE CODE (1908), ss 11 AND 13 . **I. L. R. 37 All. 1**

See CIVIL PROCEDURE CODE (1908), s. 97.
I. L. R. 39 Bom. 421

See FRAUD . **I. L. R. 37 All. 537**

See LIMITATION. **I. L. R. 42 Calc. 244**

1. ———— *Civil Procedure Code (Act V of 1908), s. 11—Judgment or findings on two issues, one of which alone was sufficient—Both findings, res judicata.* Where a judgment is based on the findings on two issues, the findings on both the issues will operate as *res judicata*, though the finding on only one would be sufficient to sustain the judgment. *Krishna Behari Roy* v. *Brojeswari Chowdranee, L. R. 2 I. A. 283*, and *Venkayya* v. *Narasamma, I. L. R. 11 Mad. 204*, followed. VENCATARAJU *v.* RAMANAMMA (1913)
I. L. R. 38 Mad. 158

RES JUDICATA—*contd.*

2. ——————— *Execution of decree—Failure of judgment-debtor to raise objection to an amount erroneously set forth in an application for the execution of a decree—Civil Procedure Code* (1908), *s*, 11, *expln.* IV. *Held*, that if a judgment-debtor does not take exception to the amount erroneously set forth in an application for the execution of a decree as being the sum due, he is not prevented by the principle of *res judicata* from doing so on subsequent application for the execution of the same decree. KALYAN SINGH *v.* JAGAN PRASAD (1915) . **I. L. R. 37 All. 589**

3. ——————— *Suit on mortgage—Ex parte decree against mortgagors, members of joint Hindu family—Decree set aside against one member for insufficient service while remaining against other members—Decree on retrial made against all the members—Decision that decree was valid decree in suit on mortgage—Fresh suit to set aside decree on same grounds as in suit on mortgage and between same parties—Civil Procedure Code (1882), ss. 13 and 244—Suit to set aside decree made with jurisdiction and allowed to become final—Valid decision unless fraudulent.* A mortgage was executed in 1884, by the manager of a Hindu joint family of which he and his two sons were the adult members, in favour of the predecessor in title of the respondents, and in a suit on a mortgage an *ex parte* decree was, on the 30th of April, 1897, made against the mortgagor and his two sons, one of whom was the appellant, and an order absolute for sale was made in September, 1900. In 1901, the *ex parte* decree was set aside against the other son, on the ground of insufficient service on him; and on the retrial of the suit the Subordinate Judge, on the 22nd of September, 1902, made a decree against all three members of the family, notwithstanding that the decree of the 30th of April, 1897, was still in existence against the appellant. In 1906, an order was applied for to make the decree of 1902 absolute against all the judgement-debtors. The appellant made objections which were overruled, and an order absolute for sale was made by the Subordinate Judge on the 3rd of November, 1906 which was affirmed by the High Court on the 26th of February, 1908. *Held*, that a fresh suit brought by the appellant against the respondents have to the decree of the 22nd of September, 1902, set aside, on the ground that he was not a party to it, and that the Court had therefore no jurisdiction to make it, was, on the principle of *res judicata*, not maintainable, as being between the same parties, and raising precisely the same grounds and objections as had been raised and disallowed in the former suit and proceedings on the mortgage. It is not open to suitors in India who have exhausted the remedies competent to them, to institute a fresh suit, the object of which is to declare that a decree competently and with adequate jurisdiction obtained therein is not applicable to them, although they are named in the decree. Even if the objections were wrongly decided, and the decree was erroneous, it must, when it has been allowed to become final, be taken as being valid

RES JUDICATA—*concld.*

if the Court had jurisdiction to make it, and provided, as was the case here, there was no fraud proved. *Malkarjun* v. *Narhari, I. L. R. 25 Bom. 367; L. R. 27 I. A. 216*, followed. RAJWANT PRASAD PANDE *v.* RAM RATAN GIR (1915) **I. L. R. 37 All. 485**

RESTITUTION.

See ASSIGNEE OF A MONEY-DECREE. **I. L. R. 38 Mad. 36**

RESUMPTION.

See CHAUKIDARI CHAKRAN LANDS. **I. L. R. 42 Calc. 710**

See GRANT . **I. L. R. 39 Bom. 68**

RESUMPTION BY GOVERNMENT.

——————— right of—

See MADRAS REGULATION (XXV OF 1802), S. 4 . **I. L. R. 38 Mad. 620**

——————— *Resumption for "public purposes" by Government of land granted by Eas India Company—Scheme to erect dwelling houses at adequate rent for the accommodation of Government Officials in Bombay—Construction of lease and sanad—English decision under 43 Eliz. c. 2 as to exemption from rating—Notice of resumption addressed to one party and served on another—Waiver.* In these appeals the Judicial Committee held (affirming the decisions of the Courts in India) that the providing of housing accommodation for Government Officials by the erection of dwelling houses for their private residences at adequate rents, was a "public purpose" within the meaning of a lease of land from the East India Company given in 1854, and a Sanad or Government Permit of land granted in 1839 by the same Company, which made such lands (situate on Malabar Hill, Bombay) liable to resumption for "public purposes" upon certain terms as to notice and compensation. The scheme was one which their Lordships agreed with the Courts below would under the circumstances in evidence redound to public benefit by helping the Government to maintain the efficiency of its servants. *Held*, also, (agreeing with the Courts below) that the English decisions which construed the words "public purposes" as used in the Statute 43, Eliz. c. 2 with reference to exemptions from rating afforded no help as to the proper construction to be put on the words in the contracts in suit. The definition of a "public purpose" that "the phrase, whatever else it may mean, must include a purpose, that it is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned," approved by their Lordships of the Judicial Committee. A notice which though addressed to one of the defendants (a testator who was dead) was served on one of his executors and trustees, also a defendant, and accepted and acknowledged by his solicitors who corresponded on the basis of it with the Government as to the resumption was held to be a valid notice, the irregularity having been thereby waived. HAMABAI

RESUMPTION BY GOVERNMENT—*concld.*

FRAMJEE *v.* SECRETARY OF STATE FOR INDIA (1914) . . . **I. L. R. 39 Bom. 279**

REVENUE COURT, JURISDICTION OF.

See MARDAS ESTATES LAND ACT (I OF 1908) . . **I. L. R. 38 Mad. 33**

REVENUE JURISDICTION ACT (ACT X OF 1876).

——— **s. 5, cl. (c.)—**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 13. **I. L. R. 39 Bom. 131**

REVENUE RECOVERY ACT (MAD. II OF 1864).

——— **ss. 32 and 42—**

See MUTT, HEAD OF. **I. L. R. 38 Mad. 356**

——— **s. 59—**

See MUTT, HEAD OF. **I. L. R. 38 Mad. 356**

REVENUE SALE LAW (ACT XI OF 1859).

——— **ss. 6, 10 to 13, 33—**

See SALE FOR ARREARS OF REVENUE.

——— **ss. 13, 54**—*Separate account—Share owned erroneously recorded in Collector's books as a larger share with proportionately larger revenue—Sale of separated share—Purchaser acquires what share.* At a sale under s. 13 of Act XI of 1859, it is not the rights of the recorded proprietor that pass, but the share itself. The rights which s. 54 of the Act in terms precludes the purchaser at such a sale from acquiring are interests such as incumbrances and the like which are referred to in the previous portion of that section. Where a separate account in respect of a 3 as. odd share owned by *H* in a revenue-paying estate was registered in the Collector's books as for a 7 as. odd share and revenue proportionate to a 7 as. odd share was apportioned to it: *Held*, that upon sale of the share under s. 13 of Act XI of 1859, the purchaser acquired the share recorded in the Collector's books and not the share actually owned by *H*. *Debi Das Choudhury* v. *Bipra Charan Ghosal, I. L. R. 22 Calc. 641, Banalata Dasi* v. *Monmotha Nath Goswami, 11 C. W. N. 821, Annoda Prosad Ghose* v. *Rajendra Kumar Ghose, I. L. R. 29 Calc. 223; s. c. 6 C. W. N. 375*, and *Gangadeen Misser* v. *Kheroo Mandul, 14 B. L. R. 170*, relied on. KHEMESH CHANDRA RAKSHIT *v.* ABDUL HAMID SIKDAR (1915) . . **19 C. W. N. 782**

——— **s. 14**—*Separate account—Separated share not in fact in arrear shown in Collector's books as in arrears—Consequential sale of whole estate, if valid—Failure of co-sharers to buy share—Sale of whole estate after closing separate accounts—Up to what date accounts to be closed—Sale as for March kist without arrears after estate falls into arrear for June kist, if vaild—Mahalwar Register, extract from, if evidence.* Where owing to the revenue, payable on account of a share of a revenue-paying estate in respect of which a separate account had been opened, being erroneously recorded in the Collector's books as Rs. 10-11-6 when the correct amount was Rs. 2-11-11 less, the share though not in fact in default was shown in those books to be in arrears at the end of the March *kist* of 1904 (29th March, 1904) to the extent of Rs. 54-3-5 and was put up for sale for that amount on 6th June, 1904, but the bids not reaching that amount the Collector gave 10 days' time, *i.e.*, up to 17th June, 1904, to co-sharers to buy up the share by paying the arrears under s. 14 of Act XI of 1859, but the latter not doing so, the Collector closed the accounts of the whole estate up to 29th March, 1904, and found the arrears for the whole estate on that date to be Rs. 3-odd, but by reason of payments made since 29th March, 1904, there were in fact no arrears due for the March *kist* on 17th June, 1904, though an arrear of Rs. 2-0-6 appeared to be due if the June *kist* was included, and the whole estate was put up for sale on the 19th September, 1904, as for the arrears due up to 29th March, 1904. *Held* (by the High Court), that as in point of fact the share in question was not in arrear on 29th March, 1904, the proceeding for the sale of that share was void and consequently the sale of the entire mahal under s. 14 was also void. That assuming that the Collector's books were correct, the Collector was bound to close all the separate accounts on 17th June, 1904, on which date he became entitled to sell the whole estate, and as on that date there were no arrears due in respect of the March *kist*, a sale of the estate as for arrears due to the March *kist* was *ultra vires*, though the sale might legitimately have been held for the June *kist*. *Bal Kishen Das* v. *Simpson, L. R. 25 I. A. 151, s. c. I. L. R. 25 Calc. 833, 2 C. W. N. 513*, followed. An attested copy of entries in Mahalwar Registers kept under s. 4 of Act VII of 1876, B. C., showing the revenue assessed on each of two mauzas comprising a revenue-paying estate was admissible in evidence. The mere fact that the Register bore the signature of the Superintendent of Survey on one corner did not make it a document kept by that officer. The Judicial Committee saw no reason to interfere with the judgment of the High Court. MUTASADDI MIAN *v.* MAHOMED IDRIS (1915) **19 C. W. N. 764**

REVENUE SALE LAW (ACT XI OF 1859)—*contd.*

——— **s. 14**—*concld.*

——— **ss. 33, 34**—*Sale for arrears of revenue, set aside on appeal by Commissioner—Commissioner's order reviewing that order and affirming sale declared by Civil Court to be ultra vires—Application to execute decree—Limitation.* Where the Commissioner of Revenue, on appeal preferred by the proprietors of a revenue-paying estate, set aside a sale for arrears of revenue, but subsequently in review cancelled that order and affirmed the sale, and the Civil Court, in a suit by the proprietors, declared the Commissioner's

REVENUE SALE LAW (ACT XI OF 1859)—*concld.*

——— **s. 33**—*concld.*

order on review *ultra vires* and upheld his previous order setting aside the sale, and also awarded possession and mesne profits to the plaintiffs: *Held*, that the decree was not one annulling a sale as contemplated by s. 34 of Act XI of 1859, as it only held that the Commissioner's order setting aside the sale must stand good. That s. 34 did not apply to this case as it was not a suit under s. 33 of the Act to annul a sale, the contention of the plaintiffs being that there was no subsisting sale to be annulled. S. 34 refers to cases brought under s. 33, and the rule of limitation laid down in s. 34 (requiring the decree-holder to apply for execution within six months of the decree) applies only to suits brought under s. 33. BAIJNATH GOENKA *v.* BAIJNATH SINGH (1914) **19 C. W. N. 464**

——— **s. 37**—

See OCCUPANCY HOLDING. **I. L. R. 42 Calc. 745**

——— *Taluk in existence before permanent settlement—Portion thereof transferred and held under a new name—Such portion if protected, when it can be traced to original taluk.* When a portion of a taluk existing from before the permanent settlement is transferred and that portion is subsequently held in proportionate *jama* under a name different from the original taluk, but the subsequent transfer and descent thereof can be traced from the original taluk, the portion so transferred is also protected under s. 37, Act XI of 1859. DOYAMAYEE CHOWDHURANI *v.* NARENDRA KISHORE ROY (1913) **19 C. W. N. 79**

——— **s. 37, cl. (*1*)**—

See HOMESTEAD LAND. **I. L. R. 42 Calc. 638**

REVERSIONER.

——— **consent of**—

See HINDU LAW—ALIENATION. **I. L. R. 42 Calc. 876**

——— **right of**—

See APPEAL TO PRIVY COUNCIL. **I. L. R. 38 Mad. 406**

REVIEW OF JUDGMENT.

See CIVIL PROCEDURE CODE (1908), O. XLVII, R. 1. **I. L. R. 37 All. 440**

——— *Application for review on ground of discovery of new matter or evidence—Appeal—"Strict proof," meaning of—Civil Procedure Code (Act XIV of 1882), ss. 626, cl. (b), 629, Civil Procedure Code (Act V of 1908), O. XLVII, rr. 4 (2) (b), 7 (1) (b).* In s. 626 of the Code of 1882 "strict proof" does not mean proof that convinces the Appellate Court but that there must be legal proof adduced before the Court that has to deal originally with the question of granting a review. The whole scheme of the Act recognises that with proper safeguards the Court of first

REVIEW OF JUDGMENT—*concld.*

instance is the proper Court to determine whether or not there should be a review, but that before a review is granted those safeguards must be observed. *Per* JENKINS C. J. "Proof", ordinarily has one of two meanings; either the conviction of the judicial mind on a certain fact, or the means which may help towards arriving at that conviction: the use of the word "strict" points to the second of these two meanings; and "strict proof" means anything which may serve directly or indirectly to convince a Court and has been brought before the Court in legal form and in compliance with the requirements of the law of evidence. It is formality that is prescribed and not the result that is described. *Per* WOODROFFE J. Cl. (*b*) of sub-s. (*1*) of r. 7 of O. XLVII of the new Code does not refer to the weight or sufficiency of the evidence. If the legal formalities are observed it is no objection that the probative force of evidence legally taken appears to be different to the Appellate Court from what it appeared to the Court granting review. "Strict proof" means proof according to the formalities of law. It does not refer to sufficiency of proof in securing a particular conviction. Whether the proof is according to law or not is within the jurisdiction of the Appellate Court to determine; the question of sufficiency of evidence is for the Court admitting the review. *Gyanund Asram* v. *Bepin Mohun Sen, I. L. R. 22 Calc. 734, Bhyrub Chunder Surmah Chowdhuri* v. *Madhub Chunder Surmah, 11 B. L. R. (F. B.) 423: 20 W. R. 84, Chunder Churn Auggrodany* v. *Loodunram Deb, 25 W. R. 324, Koleemooddeen Mundul* v. *Heerun Mundul, 24 W. R. 186*, referred to. AHID KHONDKAR *v.* MAHENDRA LAL DE (1915) . . . **I. L. R. 42 Calc. 830**

REVISION.

See ACQUITTAL. **I. L. R. 42 Calc. 612**

See CIVIL PROCEDURE CODE (1908), S. 152 . . **I. L. R. 37 All. 323**

See CRIMINAL PROCEDURE CODE, S. 345. **I. L. R. 37 All. 127**

See CRIMINAL PROCEDURE CODE, 1898 S. 438 . **I. L. R. 38 Mad. 1028**

See CRIMINAL PROCEDURE CODE, SS. 439 AND 562. **I. L. R. 37 All. 31**

See CRIMINAL PROCEDURE CODE, S. 537. **I. L. R. 37 All. 110**

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), SS. 3 (*w*), 10 AND 53 . **I. L. R. 39 Bom. 165**

See PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 15 TO 22, 46, 52. **I. L. R. 38 Mad. 15**

——— **non-maintainability of**—

See AWARD . **I. L. R. 48 Mad. 256**

——— *Extradition warrant issued by Resident in Nepal—Proceedings thereon by District Magistrate in British India, and order of surrender of fugitive—Power of High Court to*

REVISION—*concld.*

interfere in revision, with such order—Nepal, whether a "Foreign State"—Criminal Procedure Code (Act V of 1898), ss. 435, 439, 491—Extradition Act (XV of 1903), ss. 7, 15. Nepal is not a "Foreign State" within the meaning of the Indian Extradition Act (XV of 1903). Where a warrant has been issued by the Political Agent, under s. 7 of the Act, its execution by the District Magistrate in British India, in accordance with the Act, is an executive act, and the High Court cannot interfere in revision with the proceedings of the Magistrate and the order to surrender the fugitive criminal, but if the latter considers himself aggrieved thereby, he can invoke the action of the Government under s. 15. The power of the High Court, however, to interfere under s. 491 of the Criminal Procedure Code, which applies whatever be the occasion of the deprivation of the liberty of the subject, remains untouched by the Extradition Act. GULLI SAHU *v.* EMPEROR (1914) . . . I. L. R. 42 Calc. 793

REVISIONAL AND APPELLATE JURISDICTIONS.

——— *Distinction between.*

Held (as regards the application for revision of the order of the District Judge), that a Court in the exercise of its appellate jurisdiction investigates the facts, and, if necessary, substitutes its own appreciation of the evidence for that of the primary Court, but when the Court as a Court of revision looks into the evidence, it does so with a view to determine whether the subordinate Court has assumed a jurisdiction which it did not possess, or declined a jurisdiction which it did possess, or has in the exercise of its jurisdiction acted illegally or with material irregularity, and in the present case the High Court could not be rightly invited by the petitioner to examine the evidence with a view to determine whether the District Judge correctly appreciated its effect. RASHMONI DASSI *v* GANODA SUNDARI DASSI (1914) 19 C. W. N. 84

REVIVOR OF DECREE.

——— of Original Side of the High Court—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 183. I. L. R. 38 Mad. 1102

REVOCATION.

See PROBATE. I. L. R. 42 Calc. 480

——— of authority—

See GUARDIAN. I. L. R. 38 Mad. 807

RIGHT OF SUIT.

——— destruction of—

See DEED . I. L. R. 38 Mad. 746

See RIGHT TO SUE.

RIGHT OF WAY.

See PUBLIC ROAD. I. L. R. 37 All. 9

RIGHT TO SUE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 6 (*e*). I. L. R. 38 Mad. 138

——— survival of—

See APPEAL TO PRIVY COUNCIL. I. L. R. 38 Mad. 406

ROAD-CESS.

——— sale for arrears of—

See MUTT, HEAD OF. I. L. R. 38 Mad. 356

ROYALTY.

——— action for—

See TRADE-MARK. I. L. R. 42 Calc. 262

RULING CHIEF.

——— suit against—

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 86 . I. L. R. 38 Mad. 635

RYOT.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 3. I. L. R. 38 Mad. 1155

RYOTI LAND.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 3. I. L. R. 38 Mad. 738

RYOTI RENT.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 3. I. L. R. 38 Mad. 738

S

SALE.

See LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 62 AND 97. I. L. R. 38 Mad. 887

See MAHOMEDAN LAW—PRE-EMPTION. I. L. R. 37 All. 522

See MORTGAGE. I. L. R. 42 Calc. 780

See PROVINCIAL INSOLVENCY ACT (III OF 1907) S. 34. I. L. R. 37 All. 452

See TRANSFER OF PROPERTY ACT (IV OF 1882) S. 54. I. L. R. 37 All. 631

——— agreement to reconvey—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 54. I. L. R. 39 Bom. 472

——— contract of—

See CHUKANI RIGHT. I. L. R. 42 Calc. 28

——— for arrears of rent—

See LIMITATION ACT (IX OF 1908), S. 2. I. L. R. 38 Mad. 837

SALE—*contd.*

——— **knowledge of—**

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 120. **I. L. R. 38 Mad. 67**

——— **of mortgagor's rights—**

See BUNDELKHAND ALIENATION ACT (II OF 1903), S. 3. **I. L. R. 37 All. 467**

——— **to prior mortgagee after creation of a puisne mortgage—**

See MORTGAGE. **I. L. R. 38 Mad. 18**

——— **validity of—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 47 AND 50. **I. L. R. 38 Mad. 1076**

1. ——— *Court sale—Acceptance of bid, if incomplete without Court's sanction—Court and Nazir's respective functions in regard to bids.* Per Coxe, *J.*—Under the rules, it is the Nazir's business to complete the sale, though the Court (as well as the Nazir) has a discretion to decline acceptance of the highest bid, when the price offered appears so clearly inadequate as to make it advisable to do so. The Court has a quasi-revisional discretion in the matter and is not required itself to knock down the property. If a person goes to bid at a sale and in full knowledge of this condition offers bids for the property, and the property is knocked down to him, the mere fact that the Court has subsequently the discretion to confirm or annul the Nazir's action does not leave it open to the bidder to withdraw his bid. *Quære*: Whether a second appeal lies from an order refusing leave to the decree-holder to withdraw his bid. RAJENDRA PROSAD JHA *v.* UPENDRA NATH JHA (1913) **19 C. W. N. 633**

2. ——— *Execution sale, decree reversed after—Purchases in parts by decree-holder, by a defendant not a judgment-debtor and by a stranger, how affected—Mother of infant defendants appointed guardian without express consent—Decree if binds infants—Infants' interest, if passes at sale.* A Court is not competent to appoint the mother of infant Defendants their *guardian ad litem* without her express consent. Where in a mortgage suit the mother, who was proposed by the plaintiff as guardian, did not appear or signify her willingness to act as *guardian ad litem* of the infant defendants, but the Court nevertheless appointed her guardian and the suit ended in a decree, and a sale of the infants' and others' properties: *Held*, that the infants were not properly before the Court and were not bound by the decree, and the sale did not pass the right, title and interest of the infants. Where a decree is set aside subsequently to a sale in execution of the decree, the sale will be cancelled if the purchase has been made by the decree-holder but not when the purchaser is a stranger. The sale will also be cancelled when the purchaser though

SALE—*concld.*

not the decree-holder is one who was a party to the proceeding. Though r. 4 of O. XXXIV of the Civil Procedure Code contemplates a sale of the mortgaged properties, the decree must be suitably modified in exceptional circumstances, *e.g.*, when the mortgaged properties have already been converted into money by operation of law. NARENDRA CHANDRA MANDAL *v.* JOGENDRA NARAYAN ROY (1914) **19 C. W. N. 537**

SALE-DEED.

See CONSTRUCTION OF DEED. **I. L. R. 39 Bom. 119**

——— **price specified in—**

See EVIDENCE ACT (I OF 1872), S. 92. **I. L. R. 38 Mad. 514**

——— *Covenant for title, breach of—Limitation Act (IX of 1908), Art. 116—Transfer of Property Act (IV of 1882), s. 55 (2).* A suit for compensation for breach of an express or implied covenant for title and quite enjoyment in respect of a sale-deed executed after coming into force of the Transfer of Property Act is governed by article 116 of the Limitation Act. Case law reviewed. *Subbarya Reddiar* v. *Rajagopala Reddiar*, (1914) *Mad. W. N. 376*, approved. Covenant for title under s. 55 (2) of the Transfer of Property Act is annexed to the contract of sale as well as to the conveyance. ARUNACHALA *v.* RAMASMI (1914) . **I. L. R. 38 Mad. 1171**

SALE FOR ARREARS OF REVENUE.

See REVENUE SALE LAW.

1. ——— *Setting aside sale—Irregularity—Arrears under Act XI of 1859 paid—Embankment charges due—Sale under Act XI of 1859 as for arrears of revenue instead of under Public Demands Recovery Act (Beng. Act I of 1895 as amended by Beng. Act I of 1897)—Embankment Act (Beng. Act II of 1882).* In this case the High Court set aside a sale for arrears of revenue, holding that where the Collector had acknowledged payment in full of the arrears of land revenue for which the sale had been advertised, and had elected to proceed by certificate procedure against an arrear of different character, and had already directed a sale under that procedure, he could not turn round and treat the arrear under the certificate as an arrear of land-revenue without any notice to the parties under s. 5, and proceed to sell under the land revenue proclamation or the mere ground that no special exemption had been passed. The embankment charges ordered to be levied under the Certificate Act (Beng. Act I of 1895 as amended by Beng. Act I of 1897) were taken out of the purview of Act XI of 1859 unless and until fresh notices were issued under s. 5, and they could not be treated as arrears of land revenue. The sale therefore, not being for an arrear of land revenue, was liable to be set aside. An appeal from that decision was dismissed by their Lordships of the Judicial Committee, who said they saw no reason to in-

SALE FOR ARREARS OF REVENUE—*concld.*

terfere with it. DHIRAJ CHANDRA BOSE *v.* HARI DASI DEBI (1914) . **I. L. R. 42 Calc. 765**

2. ——— *Setting aside sale—Defect in specification of property to be sold in notification of sale—Ijmali share in property where there are many separate accounts opened—Revenue Sale Law (Act XI of 1859) ss. 6, 10, 11, 13, 33—Inadequacy of price caused by want of proper specification of the property for sale.* The *ijmali* or joint share in a mahal in which 148 of the owners of specific but undivided shares had obtained from the Collector separation of accounts under ss. 10 and 11 of Act XI of 1859 was put up to sale for arrears of revenue, and purchased by the respondent. In the notification under ss. 6 and 13 of the Act, the specification of the share to be sold was in the following terms :—" *Ijmali* share which cannot be specified excluding the separate accounts, number—." Then followed a list of the 148 separate accounts referred to, and at the end it was stated that " All other shares besides that specified are excluded from the sale." And the entry in column 5 (the specification column) was "The *ijmali* share cannot be particularised owing to separate accounts having been opened. The shares to be sold are those given in a separate sheet after excluding the shares in respect of which the separate accounts have been opened." In a suit to set aside the sale :—*Held* (reversing the decision of the High Court), that the notification of sale was insufficient and irregular, and not in compliance with the requirements of the law. Each case must depend on its own particular facts; and what had to be considered was whether, having regard to all the circumstances, the specification was sufficiently clear to induce likely buyers to appear and bid at the sale. It was not enough that they might go and obtain the requisite information from the Collector's office : the particulars in the notice should be sufficient in themselves to tell purchasers what they were invited to bid for. *Held*, also, on the evidence, that the property had been sold at an inadequate price, and that the lowness of the price was due to the defectiveness of the specification of the property to be sold in the notification of sale, which was not merely an irregularity but a defect that rendered the sale void. RAVANESHWAR PRASAD SINGH *v.* BAIJNATH RAM GOENKA (1915)

I. L. R. 42 Calc. 897

SALE OF GOODS.

——— *Bought and sold notes — " Bought by your order and for your account from our principals "—Principal and Agent—Personal liability of broker—Contract Act (IX of 1872), s. 230 (2)—Broker, an intermediary—Contract of employment—Award.* Where a broker signed and sent to a party a bought note in the following terms : " We have this day bought by your order and for your account from our principals . . . . 250 bales of jute . . . . (name) Brokers," and a corresponding sold note was signed and sent by the broker to another party,

SALE OF GOODS—*concld.*

the names of the principals being disclosed to each other, by the broker, at a subsequent date :—*Held*, in proceedings taken by the buyer, that the broker was merely an intermediary and not an agent for sale, and was not liable under s. 230(2) of the Contract Act. The contract (if any) between the broker and the buyer was a contract of employment, the employment being to negotiate, and not to sell, on behalf of another. *Southwell* v. *Bowditch*, *L. R. 1 C. P. 374*, followed. *Gubboy* v. *Aetoom*, *I. L. R. 17 Calc. 449*, distinguished. PATIRAM BANERJEE *v.* KANKINARRAH CO., LD. (1915) **I. L. R. 42 Calc. 1050**

SALES IN EXECUTION.

——— **duty of Courts in India in conducting—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, s. 66.

I. L. R. 38 Mad. 387

SANAD.

——— **construction of—**

See JAIGIR. **I. L. R. 42 Calc. 305**

See RESUMPTION. **I. L. R. 39 Bom. 279**

SANCTION.

See PATNI LEASE.

I. L. R. 42 Calc. 1029

SANCTION FOR PROSECUTION.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195 (*1*) (*c*).

I. L. R. 39 Bom. 310

See CRIMINAL PROCEDURE CODE, S. 195, *cl.* (*6*). . **I. L. R. 37 All. 439**

See CRIMINAL PROCEDURE CODE, SS. 195 AND 537. **I. L. R. 37 All. 283**

——— **for false complaint—**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195.

I. L. R. 38 Mad. 1044

See CRIMINAL PROCEDURE CODE, S. 403.

I. L. R. 37 All. 107

——— *Offences committed in the Court of a Deputy Magistrate—Transfer of same from the sub-division—Successor in office—Application for sanction to another Deputy Magistrate subsequently posted to the sub-division—Power of latter to grant sanction—Criminal Procedure Code (Act V 1898), s. 195.* Where there are several Deputy Magistrates at a place, and one of them is transferred, the Deputy Magistrate who comes to fill the gap is not the successor in office of the outgoing Magistrate. *Mohesh Chandra Shah* v. *Emperor*, *I. L. R. 35 Calc. 457*, referred to. Where a proceeding under s. 107 of the Code, during the course of which a forged pattah was filed and evidence given in support thereof, was disposed of by H. K. G., a Deputy Magistrate, who became afterwards the officer next senior to the Sub-divisional Magistrate, and on the transfer of the former, two other Deputy Magistrates became

SANCTION FOR PROSECUTION—*concld.*

successively the next senior officers, and ultimately K.L.M., a Deputy Magistrate, joined the subdivision as the next senior officer, and an application was made to him for sanction to prosecute the petitioners for offences, under ss. 471 and 193 of the Penal Code, committed in the Court of H. K. G.:—*Held*, that K. L. M. was not the successor in office of H K. G. and had no power to grant sanction under the circumstances. GIRISH CHANDRA RAY *v.* SARAT CHANDRA SINGH (1914) **I. L. R. 42 Calc. 667**

SANCTION TO SUE.

——— to two persons jointly—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), SS. 14 AND 18. **I. L. R. 38 Mad. 1192**

SANYASIS.

See HINDU LAW—SUCCESSION. **I. L. R. 39 Bom. 168**

SAPINDA RELATIONSHIP.

See HINDU LAW—INHERITANCE. **I. L. R. 42 Calc. 384**

SCHEDULED DISTRICTS ACT (XIV OF 1874).

See JURISDICTION. **I. L. R. 42 Calc. 116**

SEAMAN.

See MERCHANT SEAMEN ACT (I OF 1859), S. 83, CL. 4. **I. L. R. 39 Bom. 558**

SEARCH WARRANT.

See PENAL CODE ACT (XLV OF 1860), SS. 332, 323. **I. L. R. 37 All. 353**

SEAWORTHINESS.

See BILL OF LADING **I. L. R. 38 Mad. 941**

SECOND APPEAL.

See HOMESTEAD LAND. **I. L. R. 42 Calc. 638**

See MADRAS ESTATES LAND ACT (I OF 1908), S. 192. **I. L. R. 38 Mad. 655**

See PRE-EMPTION. **I. L. R. 37 All. 524**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 13. **I. L. R. 39 Bom. 131**

See REMAND. **I. L. R. 42 Calc. 888**

1. ——— *Boundary dispute—Thak map and Government chittas, which to be preferred—Chittas assumed to be public documents and therefore preferred—Error of law affecting weight to be attached to evidence—Remand.* Where the lower Appellate Court in determining a question of boundaries preferred certain Government *Chittas* of the year 1844 to the *thak* map, on the assumption, made without enquiry, that the *chittas* were public documents: *Held*, that if they were private documents, it was impossible for the High Court to say to what extent the

SECOND APPEAL—*concld.*

lower Appellate Court was influenced by the idea that the *chittas* were public documents and the case should be remanded for a finding as to whether the *chittas* were public or private documents. That but for this, both the *thak* and the *chittas* being evidence, it was for the lower Appellate Court to attach such value as it thought proper to each of them and the High Court in second appeal would not go into the weight to be attached to each. NABENDRA KISHORE ROY *v.* RAHIMA BANU (1915) **19 C. W. N. 1015**

2. ——— *Second appeal, if lies in suit for rent other than house rent not exceeding Rs. 500 in value.* In suits for rent (other than house rent) although the value thereof does not exceed Rs. 500 a second appeal lies to the High Court. SAHODRA MUDIALI *v.* NABIN CHAND PORAL (1914) . . . . **19 C. W. N. 1030**

SECRETARY OF STATE.

——— mortgage by—

See BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876), SS. 30, 35, 39, 40. **I. L. R. 39 Bom. 664**

SECURITIES.

See TRUSTEE. . **I. L. R. 38 Mad. 71**

SECURITY FOR GOOD BEHAVIOUR.

See CRIMINAL PROCEDURE CODE, SS. 110 AND 526. **I. L. R. 37 All. 29**

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, SS. 106 AND 32. **I. L. R. 37 All. 230**

SECURITY TO KEEP THE PEACE.

See CRIMINAL PROCEDURE CODE, S. 107. **I. L. R. 37 All. 33**

See CRIMINAL PROCEDURE CODE, SS. 107 AND 117. **I. L. R. 37 All. 30**

SELF-ACQUISITION.

See MALABAR LAW. **I. L. R. 38 Mad. 48**

SELLER.

——— duty of—

See CHUKANI RIGHT. **I. L. R. 42 Calc. 28**

SENTENCE.

See PRACTICE. **I. L. R. 39 Bom. 326**

SEPARATION.

——— evidence of—

See HINDU LAW—INHERITANCE. **I. L. R. 42 Calc. 1179**

SERVICE OF SUMMONS.

See SUMMONS. . **I. L. R. 42 Calc. 67**

SERVICE TENURE.

See GRANT. **I. L. R. 39 Bom. 68**

See MADRAS REGULATION (XXV OF 1802) S. 4. **I. L. R. 38 Mad. 620**

SERVIENT TENEMENT.

See EASEMENT. **I. L. R. 42 Calc. 164**

SESSIONS JUDGE.

— — powers of—

See CRIMINAL PROCEDURE CODE, S. 339. **I. L. R. 37 All. 331**

SESSIONS TRIAL.

See CRIMINAL PROCEDURE CODE, S. 339. **I. L. R. 37 All. 331**

SET-OFF.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. VIII, R. 6. **I. L. R. 39 Bom. 131**

———— *Equitable set-off, when to be entertained—Court may impose terms on defendants—Barred debt, claim of set-off in respect of.* The right of set-off exists not only in cases of mutual debits and credits but also where cross-demands arise out of the same transaction or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. *Clarke* v. *Ruthnavaloo, 2 Mad. H. C. R. 296,* followed. As the inquiry into the cross-demand made in this case by the defendants would involve great delay, the High Court allowed the inquiry to be made in this suit on certain terms imposed on the defendants. RAMDHARI SINGH *v.* PERMANUND SINGH (1913) **19 C. W. N. 1183**

SETTING ASIDE SALE.

See SALE FOR ARREARS OF REVENUE. **I. L. R. 42 Calc. 765**

SETTLEMENT.

See STAMP ACT (II OF 1899), S. 4. **I. L. R. 37 All. 159, 264**

———— of family property—

See REGISTRATION. **I. L. R. 37 All. 105**

SHAH JOG HUNDI.

See HUNDI SHAH JOG. **I. L. R. 39 Bom. 513**

SHARE CAPITAL.

See PROVIDENT INSURANCE. **I. L. R. 42 Calc. 300**

SHARE-HOLDER.

See COSTS. **I. L. R. 39 Bom. 383**

———— petiton by—

See COMPANY. **I. L. R. 39 Bom. 16**

SHEBAIT.

See EXECUTION OF DECREE. **I. L. R. 42 Calc. 440**

SHEBAIT—*concld.*

See HINDU LAW—RELIGIOUS ENDOWMENT. **I. L. R. 42 Calc. 536**

See LIMITATION. **I. L. R. 42 Calc. 244**

SHIP.

See ARREST OF SHIP.

SHIPPING.

See MERCHANT SEAMEN ACT (I OF 1859) S. 83, CL. (*4*). **I. L. R. 39 Bom. 558**

SHROTRIEMDAR.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8, EXCEP. **I. L. R. 38 Mad. 843**

SIMPLE INTEREST.

See RECEIPT. **I. L. R. 42 Calc. 546**

SINGLE JUDGE.

See HIGH COURTS ACT (24 & 25 VICT. C. 104) SS. 2, 9 AND 13. **I. L. R. 39 Bom. 604**

———— order by—

See APPEAL. **I. L. R. 42 Calc. 735**

SLAVERY BOND.

See BOND. **I. L. R. 42 Calc. 742**

SMALL CAUSE COURT.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 24. **I. L. R. 38 Mad. 25**

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 13. **I. L. R. 39 Bom. 131**

SOHAG GRANT.

See HINDU LAW—CUSTOM. **I. L. R. 42 Calc. 582**

SON.

———— birth of, subsequent to the execution of the will—

See HINDU LAW—WILL. **I. L. R. 38 Mad. 369**

———— death of, before the testator—

See HINDU LAW—WILL. **I. L. R. 38 Mad. 369**

———— liability of, to pay father's debts—

See MALABAR LAW. **I. L. R. 38 Mad. 527**

SONTHAL PARGANAS.

See JURISDICTION. **I. L. R. 42 Calc. 116**

SONTHAL PARGANAS ACT (XXXVII OF 1855).

———— s. 2—

See JURISDICTION. **I. L. R. 42 Calc. 116**

SONTHAL PARGANAS JUSTICE REGULATION (V OF 1893).

——— **part 2, s. 10—**

See JURISDICTION.

I. L. R. 42 Calc. 116

SONTHAL PARGANAS REGULATION (III OF 1872.)

——— **ss. 11, 14, 25, 25A—**

1. ——— *Record of rights, effect of—Suit challenging record, maintainability of—Special limitation—Limitation Act (IX of 1908), s. 29, how far affects Regulation III of 1872—Minors, how affected by the Regulation.* The plaintiffs some of whom were minors sued the defendants for partition of lands held in common but not as joint family property. In the record-of-rights prepared under Reg. III of 1872 the defendants had been recorded as proprietor and *mokararidar* in respect of the lands. The suit was brought after three years from the date of the publication of the record: *Held*, that the policy of Regulation III of 1872 was to have a complete record-of-rights and interests in land in the Sonthal Parganas and to exclude the jurisdiction of Civil Courts except in certain matters provided for in the Regulation. That the suit so so far as it regarded the proprietary rights in the land was barred by limitation under s. 25A of the Regulation. That the Limitation Act is applicable to the Sonthal Parganas, but s. 29 of Act IX of 1908 saves all provisions of local laws as to limitation and does not therefore affect the three years' rule under s. 25A of the Regulation. That the Regulation does not make any exception in favour of minors and the minority provisions of the general Limitation Act has reference to the periods of limitation prescribed in that Act. That the notice provided by s. 14 is to the people of the village irrespective of age or intelligence and as the law makes the record-of-rights conclusive proof of the rights and interests therein recorded the defendants could not be called upon to prove the service of the required notices. JANUKI PERSAD JHA *v.* BABU LAL JHA (1914) . . **19 C. W. N. 499**

2. ——— *Effect of the Regulation on the jurisdiction of Civil Courts—Elements necessary for suit to come within s. 25A—Sikmi ghatwali khorposh grant, share in, if a right of a "zamindar or other proprietor."* The plaintiff brought a suit for declaration of his title to a share in a certain mauza in the Sonthal Parganas which formed the subject of a sikmi ghatwali *khorposh* grant and for registration of his name in the settlement records in respect thereof. It appeared that rent was payable to the ghatwals and no land-revenue was payable direct to the Government in respect of the land which was not free from Government revenue. *Held*, that the effect of ss. 11, 14 and 25 of Reg. III of 1872 was that the jurisdiction of the Civil Courts was absolutely excluded except in cases specially provided for in s. 25A. That in order that the plaintiff's case should fall within the provisions of s. 25A,

SONTHAL PARGANAS REGULATION (III OF 1872)—*concld.*

——— **s. 11—*concld.***

it was essential for the plaintiff to show that he was a zamindar or other proprietor, and the interest in land like that claimed by the plaintiff did not come within the description of a right of "a zamindar or other proprietor." That the only remedy the plaintiff had was to apply to the Government under s. 25 of the Regulation to direct the revision of the record-of-rights. NEMO DEO *v.* PARBATI KUMARI (1914)

19 C. W. N. 549

——— **ss. 5, 6—**

See JURISDICTION.

I. L. R. 42 Calc. 116

SOVEREIGN PRINCE.

——— **suit against—**

See CIVIL PROCEDURE CODE (ACT V OF 1908), s. 86.

I. L. R. 38 Mad. 635

SPECIAL COURT.

——— *When excludes jurisdiction of ordinary Courts.* Before the jurisdiction of the ordinary Courts of the country can be excluded by a Special Court, there must be clear words in the statute excluding such jurisdiction. SASHI BHUSAN HAZRA *v.* SHEIKH ESHABAR ALI NAZIR (1915) . . . **19 C. W. N. 636**

SPECIAL TRIBUNAL.

See MADRAS CITY MUNICIPAL ACT (III OF 1904) . **I. L. R. 38 Mad. 41**

SPECIFIC PERFORMANCE.

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, R. 2.

I. L. R. 38 Mad. 698

——— **suit for—**

See HINDU LAW—ALIENATION.

I. L. R. 38 Mad. 1187

SPECIFIC RELIEF ACT (I OF 1877).

——— **s. 9—**

1. ——— *Adhiar, status of—If tenant or labourer—Possession as Adhiar, if protected under s. 9—Civil Procedure Code (Act V of 1908), s. 115.* Very largely an adhiar was a tenant and, in the absence of proof that an "adhiar" in that part of the country was a labourer, the decision of the lower Court protecting his possession under s. 9 of the Specific Relief Act was not one which the High Court would revise under s. 115 of the Civil Procedure Code. DEB NATH DAS BAIRAGI *v.* RAM SUNDAR BARMAN (1915) . . . **19 C. W. N. 1205**

2. ——— *Possession, if includes joint possession—Suit by co-sharer.* The words of s. 9 of the Specific Relief Act refer to exclusive possession and the Court in a suit under that section has no jurisdiction to grant

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— **s. 9**—*concld.*

joint possession to the plaintiff. No order under this section can be made in favour of a plaintiff who claims an undivided share in the property from which he and his co-sharers have been ousted. HARI NAMA DASS *v.* SHEIKH NAJU (1912) **19 C. W. N. 120**

3. ——— *Joint ownership —Co-owner, dispossessed by other co-owners, if may sue.* Where a co-owner in physical possession of property jointly with other co-owners is dispossessed by the latter he can institute a suit for recovery under s. 9 of the Specific Relief Act. *Hari Narain Das* v. *Elemjan Bibi, 19 C. L. J. 117 s. c. 19 C. W. N. 120,* distinguished. ATIMAN BIBI *v.* SHEIKH REASUT (1915) . **19 C. W. N. 1117**

——— **s. 15**—

See HINDU LAW—ALIENATION.
I. L. R. 38 Mad. 1187

——— **s. 22**—*Specific performance, suit for—Sale not completed in time through vendor's non-performance of essential term within time assigned—Vendor, if may sell property to another after expiry of time—Delay—Hardship, brought on by vendor—Subsequent purchaser with notice making improvements, if entitled to compensation.* Where a vendor agreed to satisfy the purchaser within a specified time that "she had a valid saleable interest in the property, by shewing a copy of the order of the Collector about the registration of her name in respect of the property, the will of her mother and other papers relating thereto," but neither the will (which had been filed in Court for probate) nor a certified copy thereof was shewn, but the vendor produced a compromise petition between the parties to the probate proceeding: *Held,* in the circumstances of the case, that it was impossible to hold that the production of the will was a non-essential term of the agreement, and non-completion of the sale was not due to the default of the purchaser who had refused to accept the compromise petition in lieu of the will or a certified copy thereof. Where property which had been agreed to be sold to plaintiff was sold to defendant on 30th August, the conveyance being registered on the following day, and the plaintiff sued for specific performance on the 5th November on the re-opening of the Civil Courts which was closed for the Puja holidays from 2nd October to 3rd November: *Held,* there was not such a delay in instituting the suit as would justify the Court in refusing specific performance. Specific performance will be refused against a vendor on the ground of hardship as contemplated in s. 22(2) of the Specific Relief Act, where the vendor has entered into the contract without full knowledge of the circumstances. Where a transferee of property buys with notice of a prior agreement to sell it to another and makes improvements in the property without inquiry of the latter: *Held,* that in a suit by the latter for specific performance, he was not entitled to be reimbursed for the costs of the

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— **s. 22**—*concld.*

improvements. HARADHONE DEBNATH *v.* BHAGABATI DASI (1914) . . **19 C. W. N. 89**

——— **s. 38**—

See BHAGDARI AND NARWADARI TENURES ACT (BOM. V OF 1862), s. 3.
I. L. R. 39 Bom. 358

——— **s. 39**—*Evidence Act (I of 1872), s. 52—Civil Procedure Code (Act V of 1908), s. 100, Order VI, Rule 6—Suit to set aside a sale-deed—Specific allegations of coercion made in the plaint—Allegations disbelieved—Different kind of coercion held probable on other circumstances and doubts—Finding not secundum allegata et probata—Substantial error in procedure—Ground for setting aside what might otherwise be a conclusion of fact.* Plaintiff sued the defendant to set aside a sale-deed on the ground of coercion of a particular kind under s. 39 of the Specific Relief Act (I of 1877). Both the lower Courts disbelieved the allegations of coercion made in the plaint, but granted relief to the plaintiff on the ground that on a consideration of other circumstances the plaintiff must have been deceitfully decoyed into going quietly and privately to the defendant's *mandap* (open shed) and there through fear of possible violence made to sign the document. On second appeal by the defendant: *Held,* reversing the decree and dismissing the suit, that a suspicion of some kind or other undefined coercion was not sufficient to support the plea of coercion, the plea being not *secundum allegata et probata. Motee Lall Opudhiya* v. *Juggurnath Gurg, 5 W. R. P. C. 25, Eshenchunder Singh* v. *Shamachurn Bhutto, 11 Moo. I. A. 7,* and *Balaji* v. *Gangadhar, I. L. R. 32 Bom. 255,* referred to. *Per* Hayward, *J.* Where fraud or coercion are alleged, detailed particulars must be given in the pleadings and parties must be strictly confined to that state of facts. Where particulars of coercion allged are wholly rejected and evidence disbelieved, and a vague and different kind of coercion is held to have been probable on other circumstances and doubts, there is a substantial error in procedure resulting in a finding not *secundum allegata et probata* and not sustainable in law. *Per* Beaman, *J.* A plaintiff who comes to Court alleging fraud or coercion in respect of which the law requires him to give particulars and he being disbelieved upon every material one of them cannot be given relief. When a finding is absolutely unsupported by any evidence at all, that is a ground for setting aside what might otherwise be a conclusion of fact. When the Court has found a case required to be made by the plaintiff not proved and has found another case unsupported in its most essential point by any evidence at all, proved, and so substituted the latter for the former, there is a substantial error in procedure under s. 100 of the Civil Procedure Code (Act V of 1908).

SPECIFIC RELIEF ACT (I OF 1877)—*concld.*

——— **s. 39**—*concld.*

PURUSHOTTAM DAJI *v.* PANDURANG CHINTAMAN (1914) . . . **I. L. R. 39 Bom. 149**

——— **s. 42**—

See CIVIL PROCEDURE CODE (1908), s. 9. **I. L. R. 37 All. 313**

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. II, R. 2. **I. L. R. 38 Mad. 1162**

1. ——— ——— *Declaratory suit under, if maintainable where property not in possession of defendants and plaintiff cannot ask for ejectment.* Where the property is not in possession of the defendants and the plaintiff cannot ask for ejectment as against them, a declaratory suit is maintainable under s. 42 of the Specific Relief Act. *Subramaniya* v. *Paramaswaran, I. L. R. 11 Mad. 116,* and *Malaiyya* v. *Perumal, 21 Mad L. J. 1022,* followed. RAMESWAR MONDAL *v.* PROVABATI DEBI (1914) **19 C. W. N. 313**

2. ——— ——— *Suit for declaration of title—Property involved in possession of Court of Wards for person entitled thereto—Parties to suit.* On the death of a *mahant,* the right of succession to whose *math* was disputed, the Court of Wards took possession of the *math* and declined to hand it over until some one should establish his right to the mahantship. *Held,* in a suit for a declaration of his title to the mahantship brought by a claimant thereto, (*i*) that the Court of Wards was not a necessary party; and (*ii*) that this did not offend against the provisions of s. 42 of the Specific Relief Act. *Goswami Ranchor Lalji* v. *Sri Girdhariji, I. L. R. 20 All. 120,* distinguished. JAGANNATH GIR *v.* TIRGUNA NAND (1915) **I. L. R. 37 All. 185**

STAMP.

See STAMP ACT (II OF 1899).

STAMP ACT (II OF 1899).

——— **s. 2, cl. (5) (*b*), s. 35 (*a*)**—*Shahajogi hundi, insufficiently stamped, admissibility in evidence—Payment of penalty.* The plaintiff sued for recovery of money due on five instruments described as hundis. The documents bore an impressed stamp of 4 annas each, were each of them attested by a witness and the money secured thereby was made payable "to the respectable holder." *Held,* that the documents in question were neither bills of exchange nor promissory notes but bonds within the meaning of s. 2. cl. (5) (*b*), of the Indian Stamp Act, and were admissible in evidence on payment of duty and penalty under s. 35 (*a*) of the Indian Stamp Act. KESHARI CHAND SURANA *v.* ASHARAM MAHATO (1915) . **19 C. W. N. 1326**

——— **s. 2 (17) and Arts. 40 and 64**—*Mortgage-deed—Hypothecation, letter of, accompanying a bill of exchange.* Where a document ran as follows:—"The executant being desirous of carrying on her deceased husband's business of which she is now the owner declares a trust in favour of the Bank of Madras in respect of machinery, plant, fixture and furniture and stock in trade in consideration of advances of money to be made by the Bank from time to time not exceeding in all Rs. 4,50,000 for the purpose of financing the business. All such advances carry interest at the rate of 6 per cent. per annum. The trustee has got full power to use, employ, sell or exchange or otherwise deal with the trust property in the ordinary course of business but should make good the property that may be sold with other goods of a similar nature and value; any goods so substituted shall be included in the security. The trustee may retain in his hands the sum of Rs. 20,000 annually in trust to pay and apply the same in payment of sums advanced by the Bank:" *Held,* that the document created a trust in express language in respect of the machinery, etc., in or upon the business premises of the firm and that the object of the instrument was to give the Bank some rights by way of security and it was a mortgage-deed for the purpose of the Stamp Act. Reference under Stamp Act, s. 46, *I. L. R. 11 Mad. 216,* referred to. *Semble*: The document is not a letter of hypothecation within the meaning of the exemption in article 40. *Obiter:* A fiscal enactment should be construed strictly and in favour of the subject. THE SECRETARY TO THE COMMISSIONER OF SALT, ABKARI AND SEPARATE REVENUE, REVENUE BOARD, MADRAS *v.* MRS. ORR (1913) . **I. L. R. 38 Mad. 646**

STAMP ACT (II OF 1899)—*contd.*

——— **s. 2**—*concld.*

1. ——— **s. 4**—*Stamp—Settlement of family property effected by two deeds, one modifying the other—Full duty paid on the first.* Two brothers, having come to an agreement as to the settlement of their joint property, embodied this agreement in a deed which was duly stamped according the value of the property dealt with thereby. Subsequently the parties to this deed executed a second deed of settlement which modified provisions of the first in a certain directions, but dealt with no property which was not covered by that deed. Both deeds were contingent on the happening of events which at the time of the execution of the second deed were still future events. *Held,* that the transaction effected by two deeds fell within the purview s. 4 of the Indian Stamp Act, 1899, and, the full duty having been paid on the first deed, the second required a stamp of one rupee only. STAMP REFERENCE BY THE BOARD OF REVENUE (1914) **I. L. R. 37 All. 159**

2. ——— ——— *Stamp—Settlement—Gift of property made by one deed—Agreement to secure expenses of donor entered into by another.* Two brothers executed deeds each in favour of the other. One was a deed of gift of all the property of the executant, and it was stamped to its full value. The other was a deed coming within no known category, but is provided for the expenses during the life-time of the executant of the deed of gift and hypothecated certain

STAMP ACT (II OF 1899)—*contd.*

———— **s. 4**—*concld.*

property to secure the payment thereof; only a portion of the property thus hypothecated, however, was included in the deed of gift. The second document bore a stamp of Rs. 10. *Held*, that the two documents were part of the same transaction and amounted to a settlement within the meaning of s. 4 of the Stamp Act, and the stamp duty paid was sufficient. STAMP REFERENCE BY THE BOARD OF REVENUE (1915)
I. L. R. 37 All. 264

———— **s. 57**—*Reference under Art. 5, Sch. I—Agreement or memorandum of agreement, meaning of—Proposal or offer in writing—Parol acceptance—Whether proposal or offer in writing requires to be stamped—Advance of loan or written declaration by a party as to his property—Entry in register of the declaration—Whether stamp necessary.* Where it appeared on the evidence as to course of business of a bank, that the bank advanced loans on promissory notes payable on demand or otherwise, but before advancing money, it required the borrrower to make a declaration in the confidential register in the form thereto annexed as to the property in his possession and to sign the same: *Held*, that the entry of the declaration in the register was not an agreement or a memorandum of an agreement which required to be stamped under Art. 5 of the sch. I of the Indian Stamp Act (II of 1899). Assuming that on the signing of the declaration there was "a proposal" or an "offer," a written proposal or a written offer does not become subject to stamp duty by reason of subsequent acceptance which is not in writing. *Carlill* v. *The Carbolic Smoke Ball Company*, [*1892*] *2 Q. B. 484*, *Chaplin* v. *Clarke*, *4 Ex Rep. 403* and *Clay* v. *Crofts*, *20 L. J., C. L., 361*, followed. *Quære:* Whether the entry in the register amounted to a proposal or offer in writing. SECRETARY TO THE COMMISSIONER OF SALT, ABKARI AND SEPARATE REVENUE, *v.* THE SOUTH INDIAN BANK, LD., TINNEVELLY (1913)
I. L. R. 38 Mad. 349

———— **s. 57 (b)**—*Reference by Board of Revenue—Document to which reference relates not in existence. Held*, that ss. 56 and 57 of the Indian Stamp Act empower the High Court to decide questions relating to instrument already in existence and which have been made the subject of action by the Collector acting under ss. 31, 40 and 41 of the Act. They do not empower the Court to give an opinion upon a deed which may or may not come into existence hereafter. STAMP REFERENCE BY THE BOARD OF REVENUE (1914) . **I. L. R. 37 All. 125**

———— **s. 59, Sch. I, Art. 35, cl. (*a*), sub. cl. (*iii*)**—*Lease—Lessee agreeing to pay annual rent plus Government assessment—Whether rent include assessment for purposes of stamp duty.* A piece of land was leased for five years whereby the lessee agreed to pay to the lessor Rs. 100 as rent *plus* Rs. 16-8-0 on account of Government assessment. The question being referred whether the stamp duty should be levied on Rs. 100 or Rs. 116-8-0, the total amount of rent and Government assessment. *Held*, that the Government assessment did not form part of the profit and therefore the stamp duty was leviable only on Rs. 100 the annual rent, under Sch. I, Art. 35, cl. (*a*), sub-cl. (*iii*) of Stamp Act. GANGARAM NARAYANDAS TELI, *In re* (1915)
I. L. R. 39 Bom. 434

STAMP ACT (II OF 1899)—*concld.*

s. 59—*concld.*

———— **Sch. I, Art. 48**—

See ATTORNEY. **I. L. R. 38 Mad. 134**

STANDING COMMITTEE.

See MADRAS CITY MUNICIPAL ACT (III OF 1904) . **I. L. R. 38 Mad. 41**

STATUTE LAW IN ENGLAND.

———— **apportionment under**—

See LESSOR AND LESSEE.
I. L. R. 38 Mad. 86

STATUTES.

See LIMITATION. **I. L. R. 38 Mad. 101**

STATUTES, CONSTRUCTION OF.

See CONSTRUCTION OF STATUTES.

———— The express words of an Indian Statute are not to be overriden by reference to equitable principles which may have been adopted in the English Courts. *Kurri Veerareddi* v. *Kurri Bapireddi*, *I. L. R. 29 Mad. 336*, followed. TIMANGOWDA *v.* BENEPGOWDA (1915) . . . **I. L. R. 39 Bom. 472**

STAY OF EXECUTION.

See PRIVY COUNCIL, PRACTICE OF.
I. L. R. 42 Calc. 739

STAY OF SUIT.

See HIGH COURT'S ACT (24 & 25 VICT. C. 104), SS. 2, 9 AND 13.
I. L. R. 39 Bom. 604

STEP IN AID OF EXECUTION.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 179 . **I. L. R. 38 Mad. 695**

STREET.

———— **right of municipality to**—

See MUNICIPAL COUNCIL.
I. L. R. 38 Mad. 6

STRIDHAN.

See HINDU LAW—HUSBAND AND WIFE.
I. L. R. 38 Mad. 1036

SUB-DIVISIONAL MAGISTRATE.

———— **powers of**—

See CRIMINAL PROCEDURE CODE, SS. 106 AND 32 . **I. L. R. 37 All. 230**

SUB-LEASE.

——— by a fazendar—

See FAZENDARI TENURE.

I. L. R. 39 Bom. 316

SUBORDINATE JUDGE.

See MADRAS CIVIL COURTS ACT (III OF OF 1873), s. 17.

I. L. R. 38 Mad. 531

SUBORDINATE OFFICERS.

——— acts of, how far binding on Government—

See MADRAS IRRIGATION CESS ACT (VII OF 1865), s. 1.

I. L. R. 38 Mad. 997

SUBSTITUTION OF PARTIES.

See APPEAL TO PRIVY COUNCIL.

I. L. R. 38 Mad. 406

SUCCESSION.

See AGRA TENANCY ACT II OF 1901, S. 22 . **I. L. R. 37 All. 9, 658**

See BABUANA GRANT.

I. L. R. 42 Calc. 582

See HINDU LAW—INHERITANCE.

I. L. R. 37 All. 604

See HINDU LAW—SUCCESSION.

See MATADARS ACT (BOM. VI OF 1887), SS. 9 AND 10. **I. L. R. 39 Bom. 478**

See SUCCESSION ACT.

SUCCESSION ACT (X OF 1865).

——— **s. 50—**

1. ——— *Attestation, if must be as to same fact, e.g., execution or acknowledgment—Execution—Guiding the hand of executant in fixing mark.* It is not necessary that each of the attesting witnesses to a will should prove the same facts. One witness who saw the testator sign the will and another before whom the execution of the will was only acknowledged by the testator may both be good attesting witnesses to the same will. Where, on the evidence, it appeared that a will had been drawn up in accordance with the wishes of the testatrix as expressed during her lifetime before reliable witnesses, that it was read over to her when she was in possession of her senses, and then being asked by one S, whether he would sign the will for her, nodded her assent, whereupon S guided her finger to make the mark and then put down the testatrix's name under the mark by his own pen, *Held*, that the will was executed by the testatrix as required by s. 50 of the Succession Act. That as the execution of the will was complete the moment the mark was made, S became an attesting witness when he wrote his own name after the testatrix's. MUKTANATH ROY CHOUDHURY *v.* JITENDRA NATH ROY CHOUDHURY (1915) . . . **19 C. W. N. 1295**

SUCCESSION ACT (X OF 1865)—*contd.*

——— **s. 50—*concld.***

2. ——— *Execution of will, what is proper—Attestation—Indian mode of signature—Presence of the witnesses at the same time and attestation of identical state of things, if necessary.* S. 50 of the Indian Succession Act differing from s. 9 of the English Act expressly provides that it is not necessary for both attesting witnesses to be present at the same time. The English system of executing the document at the foot does not usually obtain amongst Indians. Their custom is to execute the document at the top. Ordinarily the signature of the executant appears at the top right-hand corner and when he executes the document himself and not by an attorney, he is accustomed to write "by my own pen." Where in a will written on four sheets of papers the signature of the executant appeared at the top left-hand corner of the first page as being made by his own pen, but his signature only on the next two pages, and his signature with date on the last page, and the signatures of all four attesting witnesses appeared alongside the signature of the executant on the first page and on each of the other three pages appeared the signatures of two of these four persons: *Held*, that the operative signature was the one on the first page and as on the evidence it appeared that at least two of the witnesses whose names appeared on that page subscribed their names *animo attestandi*, the will was properly executed as required by s. 50 of the Succession Act. Where the testator after having executed the will in the presence of one attesting witness took it successively to the houses of two other attesting witnesses who on his acknowledgment of his signature attested the document: *Held*, that there was valid attestation by all three witnesses within s. 50 of the Succession Act. SABITRI THAKURIAN *v.* F. A. SAVI (1915)

19 C. W. N. 1297

——— **s. 57—**

See HINDU LAW—WILL.—

I. L. R. 38 Mad. 369

——— **s. 91—**

See INDIAN SUCCESSION ACT (X OF 1865), s. 187.

I. L. R. 38 Mad. 474

——— **s. 111—**

See WILL . **I. L. R. 39 Bom. 296**

——— **s. 187—**

1. ——— *Scope of—Establishment without probate of legatee's right—s. 91—Legacy, vesting of—Executor's assent—Acceptance by legatee, necessity of—Disclaimer by legatee.* Where on appeal in a partition suit it was contended by the first defendant that the first plaintiff had no title to sue in ejectment as under a will of her mother which was not proved up to the date of the trial, such property vested in the second and third plaintiffs: *Held*, that s. 187 not only affects the establishment of the right to a legacy by legatee himself or some person

SUCCESSION ACT (X OF 1865)—*concld.*

——— — s. 187—*concld.*

claiming under him, but also debars a person who desires to establish the legatee's right merely as a *jus tertii* for the purpose of his defence. The estate vested in a legatee under s. 91 of the Act is not full or absolute; but it refers only to an interest in the lagacy and not the legacy itself. Until the executor has given his assent to the legacy, the legatee has only an inchoate right to it. *Bachman* v. *Bachman, I. L. R. 6 All. 583*, and *Doe* v. *Guy 3, East 120*; *s. c., 102 E. R. 543*, followed. A legacy vested in the legatee under s. 91 of the Act is divested by his disclaimer. The rule of English law that no legacy can vest in the legatee against his will, may legitimately be adopted in deciding questions under the Indian law. In *re Hoteley Freke* v. *Calanady, 32 Ch. 408*, referred to. LAKSHMAMMA *v.* RATNAMMA (1913) . . . **I. L. R. 38 Mad. 474**

2. ——— *Conditional order of Judge for grant of Probate—Non-issue of Probate owing to non-payment of Court fees—Heir of legatee, same as legatee—Probate or Letters of Administration alone, evidence of right under s. 187.* A Hindu executing a will in the town of Madras made a bequest in favour of his son. After the death of the father, the son died leaving his mother, the plaintiff, as his heir. On the application of the executor (defendant) for a Probate the fiat of the Judge was obtained but there was no actual order for the issue of the Probate and the Probate was not issued owing to the failure of the executor to pay the requisite court fees for the same. In a suit by the testator's widow as mother of his deceased son for an order of the Court directing the defendant to apply for probate of the will and for of the estate: *Held*, (*a*) for the purposes of s. 187 of the Indian Succession Act, which governed the case, the plaintiff, though only an heir of a legatee, was in the position of a legatee, (*b*) that the fiat of the Judge for grant of Probate was only conditional and was not equivalent to an actual grant of the Probate within the meaning of s. 187 (*c*), that in the absence of a grant of Probate or Letters of Administration which was the only proof of right allowed by the section the plaintiff was debarred from claiming any rights flowing from the will and (*d*) that the mere production, proof and exhibition of the will as an ordinary exhibit in the case, were not equivalent to proof of the right by the production of the Probate or the Letters of Administration as required by the section. *Lakshmamma* v. *Ratnamma, I. L. R. 38 Mad. 474*, followed. *Mungniram Marwari* v. *Gursahai Nand, I. L. R. 17 Calc. 347*, distinguished. ALAMELAMMAL. *v.* SURYAPRAKASAROYA MUDALIAR (1915) . . . **I. L. R. 38 Mad. 988**

SUCCESSION CERTIFICATE.

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 62.
I. L. R. 37 All. 434

1. ——— *Succession Certificate Act (VII of 1889), s. 4—"Debt." meaning of—Part of debt, if certificate can be granted in respect of—Appeal.* A certificate under the Succession Certificate Act can be granted in respect of a part only of a debt due to the deceased. The word "debt" is a comprehensive term, which should receive a liberal construction. *Re Ghansham Das, (1893) All. W. N. 84*, and *Mahomed Abdul Hossain* v. *Sarifan, 16 C. W. N. 231*, approved and followed. *Akbar Khan* v. *Billkisara Begam, (1901) All. W. N. 125*, considered. *Bibee Boodhun* v. *Jan Khan, 13 W. R. 265, Muhammed Ali Khan* v. *Pattan Bibi, I. L. R. 19. All. 129, Bismilla Begam* v. *Tawassul Husain, I. L. R. 32 All. 335*, and *Ghafur Khan* v. *Kalandari Begam, I. L. R. 33 All. 327*, not followed. ANNAPURNA DASEE *v.* NALINI MOHAN DAS (1914)
I. L. R. 42 Calc. 10

2. ——— *Suit dismissed for non-production of the certificate—Certificate, if may be filed in Appellate Court. See* MOORALIDHAR ROY CHOWDHURY *v.* MOHINI MOHAN KAR (1915)
19 C. W. N. 794

SUCCESSION CERTIFICATE ACT (VII OF 1889).

——— s. 4—

See SUCCESSION CERTIFICATE.
I. L. R. 42 Calc. 10

——— ss. 18, 27—*Certificate granted by specially empowered Subordinate Judge, if may be revoked by District Judge otherwise than in appeal—Reg. V of 1799, jurisdiction under, nature of.* The fact that no appeal has been preferred against an order of a Subordinate Judge (who has been invested with the powers of a District Court under the Succession Certificate Act) granting a certificate, is no bar to its revocation at any time when the circumstances enumerated in s. 18 of the Act are proved. The revocation must in such a case be ordinarily made by the Subordinate Judge when he is still exercising that jurisdiction in the district. The District Judge has in such circumstances no jurisdiction to make the revocation except where the case having been instituted and being pending before the Subordinate Judge has been withdrawn by the District Judge. The jurisdiction of the District Judge under Reg. V of 1799 is more administrative than judicial. He can act thereunder only when there is no claimant, and acting under that Regulation, he is bound to respect the order granting a certificate until the same was revoked by a competent authority. SUKHIA BEWA *v.* SECRETARY OF STATE FOR INDIA (1914)
19 C. W. N. 551

SUIT.

See FRAUD . **I. L. R. 37 All. 537**

See GUARDIANS AND WARDS ACT (VIII OF 1890), SS. 12, 24, 25.
I. L. R. 37 All. 515

See PRE-EMPTION. **I. L. R. 37 All. 529**

See RES JUDICATA.
I. L. R. 37 All. 485

SUIT—*concld.*

——— by heir for recovery of her share—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 62 **I. L. R. 37 All. 434**

——— by reversioner—

See HINDU LAW—WILL. **I. L. R. 37 All. 422**

——— by reversioner to set aside adoption—

See ADOPTION . **I. L. R. 37 All. 496**

——— for declaration of title—

See SPECIFIC RELIEF ACT (I OF 1877), S. 42 . . **I. L. R. 37 All. 185**

——— for money had and recieved—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 62 **I. L. R. 37 All. 40, 233**

——— for possession of land—

See LIMITATION ACT (IX OF 1908), S. 28, ART. 47 . **I. L. R. 38 Mad. 432**

——— for rent under registered agreement—

See LIMITATION **I. L. R. 38 Mad. 101**

——— maintainability of—

See CIVIL PROCEDURE CODE (1908) S. 9. **I. L. R. 37 All. 313**

——— on lost bond—

See MORTGAGE **I. L. R. 37 All. 426**

——— to enforce payment of money charged upon immoveable property—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 132 **I. L. R. 37 All. 400**

——— to recover money deposited with Bank—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 60 . **I. L. R. 37 All. 292**

——— withdrawal of—

See CIVIL PROCEDURE CODE (1908), O. XXIII, R. 1. **I. L. R. 37 All. 326**

See PARTITION **I. L. R. 37 All. 155**

SUIT FOR LAND.

See JURISDICTION. **I. L. R. 42 Calc. 942**

SUITS VALUATION ACT (VII OF 1887).

——— s. 8—

See JURISDICTION. **I. L. R. 38 Mad. 795**

SUMMONS.

——— *Service of summons—Indian Marine Service—Civil Procedure Code (Act V of 1908), O. V., rr. 15, 17 and 27— Ex parte decree—Officer or mechanic in the employ of the Indian Marine.* Under the Civil Procedure Code an officer or mechanic in the employ of the Indian Marine is subject to exactly the same rules as any other person as regards service of summons. They come within the operation of rules 15 and 17 of Order V of the Code of Civil Procedure. INTU MEAH MISTRY *v.* DARBUKSH BHUIYAN (1914) . . **I. L. R. 42 Calc. 67**

SUNDARBANS.

——— *Lessee from Government of lands in—Permanent tenure granted by lessee—Condition that rent will not abate in case of diluvion, if valid—Onus of proof—Reg. III of 1828, s. 13.* Where tenants took a permanent lease of lands in the Sundarbans stipulating that "we shall not object to the payment of rent on the ground of drought, inundation, death, desertion, overflow of salt water, diluviation by river, etc.": *Held,* that it was for the tenants if they impeached this stipulation as being inconsistent with the provisions of s. 52 of the Bengal Tenancy Act to establish that the tenure was not situated in a permanently settled area. S. 13 of Reg. III of 1828 does not ignore or invalidate any permanent settlements made by Government before 1828. It also authorises similar settlements subsequently made by Government. It is, therefore, erroneous to hold that there could not be a permanent tenure in the Sundarbans. That the stipulation barred not only a plea of reduction of rent in defence, but also a suit for abatement of rent. KHETTRAMANI DASI *v.* JIBAN KRISHNA KUNDU (1914) . . . . **19 C. W. N. 546**

SURETY.

See PROMISSORY NOTE. **I. L. R. 38 Mad. 680**

——— discharge of—

See CONTRACT ACT (IX OF 1872), SS. 134, 137 . **I. L. R. 39 Bom. 52**

——— liability of—

See HINDU LAW—SURETY DEBT. **I. L. R. 38 Mad. 1120**

1. ——— *Rejection of sureties only on Police report without judicial enquiry into their fitness—Inquiry to be held by the Magistrate passing the order for security—Criminal Procedure Code (Act V of 1898), ss. 118, 122.* Sureties tendered by a party bound down under s. 118 of the Criminal Procedure Code should not be rejected on a police report as to their fitness but only after a judicial enquiry under s. 122, and by the Magistrate who has passed the order for security. AKBAR ALI MAHOMED *v.* EMPEROR (1914) **I. L. R. 42 Calc. 706**

2. ——— *Bail-bond—Forfeiture on failure of accused to appear—Suit by surety against third person upon promise to indemnify—Contract, legality of.* A bail-bond having been forfeited owing to the failure of the accused to appear, the surety sued a third person who had agreed to indemnify the surety for recovery of the amount forfeited: *Held,* that the

SURETY—*concld.*

contract to indemnify was illegal and could not be enforced. PRASANNO KUMAR CHUCKERBUTTY *v.* PROKASH CH. DUTT (1914) . **19 C. W. N. 329**

SURRENDER OR ABANDONMENT.

———— of holding—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 80, ETC.
I. L. R. 38 Mad. 608

SURVEY ACT.

See BENGAL SURVEY ACT.

T

TAXATION.

See COSTS **I. L. R. 39 Bom. 383**

TEMPLE.

See HINDU LAW ENDOWMENT.
I. L. R. 37 All. 298

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 3.
I. L. R. 38 Mad. 1176

See TEMPLE COMMITTEE.

TEMPLE COMMITTEE.

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863). **I. L. R. 38 Mad. 594**

———— power of—

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 3
I. L. R. 38 Mad. 1176

TEMPORARY INJUNCTION.

See INJUNCTION **19 C. W. N. 442**

TENANCY.

———— determination of—

See LANDLORD AND TENANT.
I. L. R. 38 Mad. 710

TENANT.

———— holding over, suit to eject—

See JURISDICTION.
I. L. R. 38 Mad. 795

———— right of—

See MALABAR TENANTS' IMPROVEMENTS ACT (MADRAS I OF 1900), SS. 3, 5.
I. L. R. 38 Mad. 954

———— surrender by, of waste lands—

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8. **I. L. R. 38 Mad. 891**

TENANT FOR A TERM.

See LIMITATION ACT (IX OF 1908), S. 8, SCH. I, ART. 47. **I. L. R. 38 Mad. 432**

TENANT FOR A TERM—*concld.*

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8, EXCEP.
I. L. R. 38 Mad. 843

TENANT IN COMMON.

See HINDU LAW—JOINT FAMILY.
I. L. R. 38 Mad. 684

See POSSESSION **I. L. R. 37 All. 203**

TENDER.

———— by debtor—

See LIMITATION **I. L. R. 38 Mad. 374**

———— essentials of a valid—

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 54 AND 78, CL. (2).
I. L. R. 38 Mad. 629

———— methods of—

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 54 AND 78, CL. (2).
I. L. R. 38 Mad. 629

TENEMENTS.

———— severance of—

See EASEMENT. **I. L. R. 38 Mad. 149**

TENURE.

See JAIGIR **I. L. R. 42 Calc. 305**

TENURE OF LAND.

See BOMBAY CITY LAND REVENUE ACT (BOM. II OF 1876), SS. 30, 35, 39, 40.
I. L. R. 39 Bom. 664

TESTATOR.

———— money belonging to, but not known to him—

See WILL. **I. L. R. 38 Mad. 1096**

THAK AND SURVEY MAPS.

———— *Value of, as evidence of title and possession. Thak* and survey maps may be presumed to have correctly delineated the boundaries of villages and thus to furnish valuable evidence of possession at the time they were made and consequently also of title. But such presumption fails where the maps were promptly challenged and found inaccurate. MOHENDRA NATH BISWAS *v.* SHAMSUNNESSA KHATUN (1914).
19 C. W. N. 1280

TIDAL RIVER.

See FISHERY **I. L. R. 42 Calc. 489**

TIMBER TREES.

———— appropriation of, by tenant—

See CUSTOM . . **19 C. W. N. 1188.**

TIME.

———— computation of—

See LEAVE TO APPEAL TO PRIVY COUNCIL.
I. L. R. 42 Calc. 35

TITLE—*concld.*

See MADRAS LAND ENCROACHMENTS ACT (III OF 1905).
I. L. R. 38 Mad. 674

See TRADE-MARK.
I. L. R. 42 Calc. 262

——— **covenant for—**

See SALE-DEED **I. L. R. 38 Mad. 1171**

——— **proof of—**

See FISHERY **I. L. R. 42 Calc. 489**

——— **question of—**

See PUBLIC NUISANCE.
I. L. R. 42 Calc. 158

TORT.

See MARRIAGE, CONTRACT OF
I. L. R. 39 Bom. 1682

TRADE-MARK.

——— **meaning of—**

See PENAL CODE, S. 478.
19 C. W. N. 957

1. ——— *Title — Assignment—Trade-mark in selection of natural products as indicating quality—Goodwill—License to use trade-mark—Action for royalty—Estoppel—Licensee estopped from questioning validity of license—Evidence Act (I of 1872) s. 117—Damages, action for.* In India the law of trade-marks is not governed by statute, there being no statutory system of registration. Rights and liabilities in connection with trade-marks are determined by reference to the principles of the common law of England. *British-American Tobacco Co., Ld.*, v. *Mahboob Buksh, I. L. R. 38 Calc. 110*, referred to. A trade-mark cannot be transferred or descend in gross, but only together with the goodwill of the business to which it relates. A trade-mark represents the origin of the goods to which it is attached or their trade association: the truth of the representation is essential. By usage, successors in business may use their predecessors' trade-marks where the representation still continues to be substantially true. A selector of natural products like jute may have a trade-mark in connection with such selection, as indicating good quality. *Major Brothers* v. *Franklin & Son*, [*1908*] *I. K. B. 712*, folowed. Meaning of "good-will" explained. *Inland Revenue Commissioners* v. *Muller & Co.'s Margarine, Ld.*, [*1901*] *A. C. 217*, referred to. In a suit for royalty, brought by the licensors of certain jute trade-marks against the licensees, the defence taken was that the plaintiffs had no title to the marks in question, and that the license was void:—*Held*, that by virtue of s. 117 of the Evidence Act the licensees were estopped from questioning their licensors' title or the validity of the license. At any rate s. 117 cast on the defendants the burden of proving that the goodwill of the business had not passed to the plaintiffs to support the transfer of the trade-marks, and the defendants having failed to do so the plaintiffs were entitled to the royalty claimed. Claim to damages by the licensors for depreciation in the

TRADE-MARK—*concld.*

value of the trade-marks due to the default of the licensees, refused on the facts of the case. The Decision of IMAM *J.* in *Jagarnath & Co.* v. *Cresswell I. L. R. 40 Calc. 814*, affirmed. HANNAH *v.* JUGGERNATH & Co. (1914)
I. L. R. 42 Calc. 262

2. ——— *Infringement, action for—Advertisement and circular—Cause of action—Jurisdiction of Court where advertisement is published.* A trader is not entitled to pass off his goods as goods of another trader by selling them under a name which is likely to deceive purchasers (whether immediately or ultimately) into the belief that they are buying goods of another trader. The defendant, a resident of Gaya, published advertisements and distributed hand-bills at Muttra in the Agra Judgeship advertising his medicine known as Asli 'Sudha Sindhu.' The plaintiff alleged that 'Sudha Sindhu' was his registered trade-mark and he brought this suit for an injunction and for damages in the Court of the Subordinate Judge of Muttra. *Held*, that a trade-mark could be infringed by means of advertisement and as the cause of action arose partly at Muttra, the courts there had jurisdiction to entertain the suit. *Jay* v. *Ladler, L. R. 40 Ch. D. 649*, *Bourne* v. *Swan and Edgar, Limited, L. R. 1 Ch. 211*, *Frank Reddaway* v. *George Banham*, [*1896*] *A. C. 199*, referred to. KHESHTRA PAL SHARMA *v.* PANCHAM SINGH VARMA (1915)
I. L. R. 37 All. 446

TRADING WITH THE ENEMY.

——— ——— *Acts done and directions given before date of the Ordinance, relevancy of—Subsequent ratification—"Trading" meaning of—Directions to an agent to take delivery of goods lying in London, and to sell to German firm against payment—Supply of goods to agent and sale by him to German firm—"Destined," meaning of—Legal and actual destination—Goods shipped to enemy country before the war but taken up by English firm in London—Exportation of goods to accused's agent in Italy refused by such firm because of Royal Proclamation—Abetment of supply to, or of trading by the agent—Power of Appellate Court to alter conviction of principal offence to one of abetment—Discretion of Court—Commercial Intercourse with Enemies Ordinance (VI of 1914), s. 3—Trading with the Enemy Proclamation No. 2 cls. 5 (7), (9)—Royal Proclamation of 15th October 1914—Criminal Procedure Code (Act V of 1898), s. 423.* Where a case of mica was shipped by the accused to a German firm before the war but arrived in London after its outbreak and was taken up by an English firm, whereupon he wrote, before the date of the Ordinance VI of 1914, *viz.*, 14th October 1914, to a Bank in London, to make over the case to the English firm, and also to the latter to take it up and send the same to his agent at Genoa on application by such agent which, however, the English firm refused to do by reason of the prohibition of the export of mica to Italy by Royal Proclamation, and further wrote to the agent to apply

ADING WITH THE ENEMY—*concld.*

the English firm for the mica, and to deliver it a German purchaser against payment, and ıere, after the date of the Ordinance, the accused ain wrote to his agent informing him of his afore-d letters and instructions to the Bank and the glish firm, and directing the agent to apply for e case of mica to the latter and to deliver it to e German purchaser against payment, which ections were not in fact carried out on account the refusal by the English firm to export the ca to Italy :—*Held*, that, as the Ordinance was retrospective, the only acts and directions ich the Court could take into consideration, establish the offence of trading with the enemy, re such as were done or given after the date of enactment, unless the previous acts and direc-ns were ratified thereby. *Quœre*: Whether ıre directions to an agent to apply for goods in possession of a third person, and to deliver same to an enemy against payment amount "trading" within the meaning of the Trading ch the Enemy Proclamation No. 2, cl. 5 (7). e word "destined" when used with the term rading," in the same sub-clause, means ıtended for" and not "on the way to." *ıal* destination must not be confused with *ual* destination. The Court must determine ether the goods were actually destined for an emy and with reference only to acts done and ections given after the date of the Ordinance VI 1914. If the English firm had really purchased goods outright, they were not in existence, far as any disposition of them by the accused s concerned, after the date they were taken up d paid for, and could not be destined for enemy. But assuming that the said firm had rely taken over the goods on behalf of the ıused and subject to his further instructions, a ection to the agent to apply for and deliver m to a German purchaser against payment s insufficient to give the goods an enemy tination in fact, as such direction had no eration on receipt thereof by reason of the usal of the English firm to export the goods to agent at Genoa. *Held*, also, that, as the point s not free from doubt, the accused was entitled the benefit of it. It is not a universal rule that no case can an Appellate Court convict an ıused of abetment, when he was charged only ch the principal offence. But it is discretionary ch the Appellate Court to allow such fresh ırge being tried on appeal. The Court refused, der the circumstances of the case, to alter the ıviction to one of abetment of supply to, or of ding by, the agent. Where the agent of the ıused sold and delivered some cases of mica, and nded over the shipping documents for certain ıer cases lying in London, to a German firm its agent in Genoa :—*Held*, *per* BEACHCROFT D GREAVES *JJ.*, that the accused was guilty of offence of supplying goods to the enemy within 5 (7) of the Trading with the Enemy Ordinance . 2. INDAR CHAND *v.* EMPEROR (1915)

I. L. R. 42 Calc. 1094

TRADING WITH THE ENEMY PROCLAMATION NO. 2.

——— Cls. (7), (9)—

See TRADING WITH THE ENEMY.

I. L. R. 42 Calc. 1094

TRANSFER.

See CIVIL PROCEDURE CODE (ACT V OF 1908) S. 24. **I. L. R. 38 Mad. 25**

See CRIMINAL PROCEDURE CODE, SS. 110 AND 526. **I. L. R. 37 All. 20**

See CRIMINAL PROCEDURE CODE, S. 193 **I. L. R. 37 All. 286**

See SANCTION FOR PROSECUTION. **I. L. R. 42 Calc. 667**

——— by mortgagee—

See MORTGAGE BY MINOR. **I. L. R. 38 Mad. 1071**

——— oral—

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 118 TO 120, 54 AND 55, CL. 6 (*b*). **I. L. R. 38 Mad. 519**

——— *Transfer by District Judge of particular case to Additional Judge—Civil Courts Act (XII of 1887), ss. 8, sub-s. (2), 22, sub-s. (2)—Probate and Administration Act (V of 1881), ss. 51, 53.* It is competent to a District Judge to transfer a particular case to an Additional Judge under the provisions of sub-s. (2) of s. 8 of the Civil Courts Act of 1887. RUP KISHORE LAL *v.* NEMAN BIBI (1915) **I. L. R. 42 Calc. 842**

TRANSFER OF PROPERTY ACT (IV OF 1882).

——— **ss. 2, cl.** (*c*), **116**—*Ijaradar for a term, sub-lease for residential purposes granted by, before 1882—Holding over and acceptance of rent by next such ijaradar, effect of—Transfer of Property Act, effect of, on such tenancy—S. 2, cl.* (*c*), *s. 116, conditions necessary for the application of—Notice required to terminate such tenancy.* The defendant was brought upon the land as a tenant under a verbal lease before the Transfer of Property Act came into force by an *ijaradar* of the land, who held for a limited term which expired after the Transfer of Property Act had come into operation. The tenancy was created for residential purposes. The defendant continued in occupation of the land and was treated as tenant by the next *ijaradar* who accepted rent from the defendant. The landlord, the lessor of the *ijaradar*, never accepted rent from her. *Held*, (in a suit for ejectment of the defendant), that in order to entitle the defendant to avail herself of the benefit of cl. (*c*) of s. 2 of the Transfer of Property Act it is necessary for her to establish that her right as it exists at present arose out of a legal relation constituted before the Transfer of Property Act came into force; in other words, that the tenancy created by the first *ijaradar* continued in operation even after the termination of the first *ijara*. That the tenancy of the defendant came to amend when the *ijara* during which it was created

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 2**—*concld.*

expired, and the true effect of the acquiescence by the second *ijaradar* in the continuance of the possession by the defendant and the acceptance of rent from her was to create in her a new tenancy and the provisions of cl. (*c*) of s. 2 of the Transfer of Property Act were consequently of no avail to the defendant. That in order to come within the scope of section 116, the defendant, besides proving that she as under-lessee remained in possession of the property after the determination of the *ijara* granted to her lessor, had to establish that the lessor or his legal representative accepted rent from her. That the expression "legal representative" is not defined in the Transfer of Property Act, but it clearly implies a person who occupies the same position as the lessor and it could not include the second *ijaradar* who had transferred to him only a fraction of the interest possessed by the lessor. That the land in suit having been leased for a purpose other than agricultural or manufacturing, the tenancy must, even if s. 116 applied, be deemed, in the absence of an agreement to the contrary, to have been a lease from month to month terminable by fifteen days' notice expiring with the end of a month of the tenancy. DURGI NIKARINI *v.* GOOBORDHAN BOSE (1914). . . . **19 C. W. N. 525**

——— **s. 4**—

See DAMDUPAT, RULE OF
I. L. R. 42 Calc. 823

——— **ss. 4 and 54**—*Unregistered sale-deed for land of less than Rs. 100 in value, invalidity of, when no previous oral sale—Evidence, inadmissibility of, to prove adverse possession—Possession change of, in cases of oral sale, how to be effected.* A sale of tangible immoveable property of the value of less than Rs. 100 effected by an unregistered instrument (without any prior oral sale) followed by delivery of possession is invalid and inoperative to pass the title to the property under secton 54, Transfer of Property Act (IV of 1882). A document which affects immoveable property, and which is required by law to be registered is, if it is not registered, inadmissible in evidence to prove the nature of possession of the person claiming under it, such as, the adverse character of the possession. *Per* CURIAM. If an oral sale is made of immoveable property of the value of less than Rs. 100 to a person already in possession of the property it is sufficient to pass title if the vendor converts by appropriate declarations or acts the previous possession into a possession as vendee and it is not necessary that to satisfy the section 54 of the Transfer of Property Act, the person in possession should give it up formally and take it afterwards as vendee. *Sibendrapada Banerjee* v. *Secretary of State for India, I. L. R. 34 Calc. 207*, not followed. MUTHUKARUPPAN *v.* MUTHU (1914).
I. L. R. 38 Mad. 1158

——— **s. 6** (*a*)—*Hindu temple, offerings to —Pujari's right to a share if alienable—Estoppel—*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 6**—*contd.*

Res extra commercium. The chance that future worshippers will give offerings to a temple is a mere possibility within the meaning of sec. 6, cl. (*a*), of the Transfer of Property Act and as such cannot be transferred. Such a transfer being prohibited by statute the transferor is not estopped from questioning its validity. *Per* Sharfuddin, *J.* The right of the *pujari* of a Hindu temple to take a share of the offerings is a *res extra commercium.* PUNCHA THAKUR v. BINDESHRI THAKUR (1915)
19 C. W. N. 580

——— **s. 6** (*e*)—

1. ——— *Right to sue, assignment of—Tort—Assignment of claim founded on, validity of—Damages for negligence of agent, assignment of claim for.* A mere right to recover damages for the negligence of an agent in failing to collect rents cannot be transferred. Such a right is nothing more than a right to sue within the meaning of section 6 (*e*) of the Transfer of Property Act (IV of 1882). If such a claim is founded on tort, it is not assignable. *Dawson* v. *Great Northern and City Railway, [1905] 1 K.B. 260*, and *Defries* v. *Milne, [1913] 1 Ch. 98*, referred to. *Held*, also, that the claim if founded on contract was unassignable in law being transferred after breach. *Abu Mahomed* v. *S. C. Chunder, I. L. R. 36 Calc. 345*, applied. *Shyam Chand Koondoo* v. *The Land Mortgage Bank of India, I. L. R. 9 Calc. 695*, referred to. *Mahodas* v. *Ranji Patak, I. L. R. 16 All. 286*, distinguished. *Dawson* v. *Great Northern and City Railway, [1905] 1 K. B. 260*, explained. VARAHASWAMI *v.* RAMACHANDRA RAJU (1913). **I. L. R. 38 Mad. 138**

2. ——— *Transfer of right to past mesne profits, illegality of.* A transfer of a claim for past mesne profits is invalid under clause (*e*) of section 6 of the Transfer of Property Act (IV of 1882). *Varahaswami* v. *Ramachandra Raju, 24 Mad. L. J. 298*, followed. *King* v. *Victoria Insurance Company, [1896] A. C. 250*, distinguished. SEETAMMA *v* VENKATARAMANAYYA (1913.) . . . **I. L. R. 38 Mad. 308**

——— **s. 10**—*Hindu Law—Grant, deed of, for maintenance and other expenses—Grant by zamindar to his wife and minor son—Estate of grantees—Restraint on alienation—Lease for fifteen years by mother as guardian, if void, or voidable by minor—Repudiation by zamindar as natural guardian, mere act of, if sufficient—Suit to set aside—Decree in such suit necessary—Suit by guardian—Dismissal for default, effect of—Suit by lessee for rent—Objection by tenants as to validity of lease.* A zamindar made a grant of certain lands to his wife and his minor son for their maintenance, clothing and other expenses. The deed of grant contained a provision that the grantees were not to alienate the properties by sale, mortgage, etc. The mother of the minor son granted a lease of the lands for fifteen years in favour of the plaintiff, and died a few months thereafter. The

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concld.*

s. 10—*concld.*

zamindar, the father and natural guardian of the minor, sued to set aside the lease, but the suit was dismissed in consequence of the zamindar's default in obeying an order of the Court to appear in person. The plaintiff, as the lessee of the lands, sued to recover *melvaram* due to him from the defendants who were the ryots but did not join the minor grantee as a party to the suit. The defendants contended that the lease to the plaintiff was not valid and that the plaintiff was not entitled to recover rent from them. *Held* (on a construction of the deed), that both the mother and the minor son obtained under the grant an estate in the property and were tenants-in-common during the life-time of the mother after which the son was to hold the whole property. The provisions against alienation contained in the deed of grant were absolute restraints on alienation and were void under section 10 of the Transfer of Property Act and under the Hindu Law. The lease for fifteen years granted to the plaintiff by the mother acting as guardian of her minor son, even if it was beyond the powers of a guardian, was not void against the minor but only voidable by him. The party who is entitled to avoid a transaction may do so by an unequivocal act repudiating the transaction or by getting a decree of Court setting it aside. When a guardian (natural or appointed) of a minor has given a lease, another guardian cannot set it aside by a mere act of repudiation: he can do so only by obtaining a decree of Court in a suit which may be instituted on behalf of the minor during his minority; but his action in instituting a suit to set it aside (which was dismissed for his default) has no greater effect than his mere act of repudiation: *Held*, consequently, that the plaintiff was entitled to recover rent from the defendants under the lease. MUTHUKUMARA CHETTY *v.* ANTHONY UDAYAR (1914)

I. L. R. 38 Mad. 867

ss. 36 and 108—

See LESSOR AND LESSEE.

I. L. R. 38 Mad. 86

s. 52—*Lis pendens—Contentious suit, meaning of—Friendly suit, no contest—Plea of lis pendens not taken in the written statement—Point of Law—Plea permitted after remand.* The words "contentious suit" in section 52 of the Transfer of Property Act (IV of 1882) are used in contradistinction to a friendly suit in which there is no contest. Every suit other than such a friendly suit, by its origin and nature, falls within the definition of a contentious suit. *Jogendra Chander Ghose* v. *Fulkumari Dassi, I. L. R. 27 Calc. 77*, followed. *Krishna Kamini Debi* v. *Dino Mony Choudhurani, I. L. R. 31 Calc. 658*, and *Upendra Chandra Singh* v. *Mohri Lal Marwari, I. L. R. 31 Calc. 745*, dissented from. *Faiyaz Husain Khan* v. *Prag Narain, I. L. R. 29 All. 339*, referred to. A point of law such as *lis pendens* which was argued before the first court and which required

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

s. 52—*concld.*

no further facts than those already on record must be considered by the Appellate Court though the defendants did not plead it in the written statement. KATHIR *v.* MAREMADISSA (1913)

I. L. R. 38 Mad. 450

s. 53—

See MORTGAGE BY MINOR.

I. L. R. 38 Mad. 1071

Fraudulent transfer—Transfer voidable at the option of the person defrauded—Purchaser at Court sale not a subsequent transferee—Person having interest in the property means person having interest at the date of the transfer. The plaintiff purchased certain lands in 1906. In execution of a money-decree against the vendor, the lands were sold at a Court auction and purchased by the defendant in 1909, with full notice of the sale of 1906. The defendant having been put into possession of the lands, the plaintiff sued to recover possession relying on the sale of 1906. The defendant contended that the sale was not genuine and was not supported by consideration and was made with the object of defeating the creditors of the vendor. The trial court negatived the contentions and decreed the plaintiff's claim. The lower appellate Court held that the sale of 1906 was bad under section 53 of the Transfer of Property Act, as the consideration was grossly inadequate, the sale was effected with the object of defeating and delaying the creditors of the vendor, and the plaintiff participated in the fraud. The plaintiff having appealed:—*Held*, that the sale of 1906 could not be avoided, under section 53 of the Transfer of Property Act (IV of 1882), at the option of the defendant, who was not a creditor of the vendor, or a subsequent transferee or a person having an interest in the property, within the meaning of the section. Having regard to the preamble as well as section 5 of the Transfer of Property Act (IV of 1882), a person who steps in by operation of law and not by any act of the owner is not a subsequent transferee within the meaning of section 53 of the Act. A person having an interest in the property within the meaning of section 53 means the person who has such interest at the time of the transfer objected to. VASUDEO RAGHUNATH *v.* JANARDHAN SADASHIV (1915)

I. L. R. 39 Bom. 507

s. 54—

1. *Sale—Condition attached to the payment of the purchase-money—Public policy.* Where a deed purporting to be a sale deed contained a stipulation that the price should be paid within one year, provided that possession was obtained within that time; if possession was not obtained, then the payment of the price should be postponed, and further that in the event of the vendee not getting the property, the price should not be paid at all: *Held*, that the transaction amounted to a sale within the meaning of section 54 of the Transfer of Property

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 54**—*concld.*

Act, and the condition postponing the payment of the consideration was not contrary to public policy. KAULESHAR PRASAD MISRA *v.* ABADI BIBI (1915) . . . **I. L. R. 37 All. 631**

2. ——— *Sale—Agreement to reconvey—No bar to recovery of possession—Construction of statute.* An agreement by the plaintiff to reconvey the property to the defendant made contemporaneously with the sale-deed cannot be pleaded in bar of plaintiff's right to recover possession under the deed of sale. The provisions of section 54 of the Transfer of Property Act are imperative. The express words of an Indian Statute are not to be overriden by reference to equitable principles which may have been adopted in the English Courts. *Kurri Veerareddi* v. *Kurri Bapireddi, I. L. R. 29 Mad. 336*, followed. TIMANGOWDA *v.* BENEPGOWDA (1915) **I. L. R. 39 Bom. 472**

——— **s. 55**—

See CHUKANI RIGHT **I. L. R. 42 Calc. 28**

——— **s. 55** (*2*)—

See SALE-DEED **I. L. R. 38 Mad. 1171**

——— **s. 55** (*4*)—

See DEBT **I. L. R. 42 Calc. 849**

——— **ss. 55, 58, 100**—

See RATES AND TAXES **I. L. R. 42 Calc. 625**

——— **s. 59**—*Mortgage deed executed by pardanashin ladies, attestation of—Requirements as to identity of executants, and as to witnesses seeing signatures made—Waiver of right of priority by first mortgagee in favour of second mortgagee—Right to recover unsatisfied portion of claim in subsequent suit from purchaser of mortgagor's interest in other property comprised in mortgage.* In a suit on a mortgage executed by two pardanashin ladies, the defendant objected that the deed had not been duly attested in accordance with the provisions of section 59 of the Transfer of Property Act (IV of 1882), as interpreted in the decision of the Privy Council in *Shamu Patter* v. *Abdul Kadir Ravuthan, I. L. R. 35 Mad. 607 : L. R. 39 I. A. 218*, and was therefore not operative as a mortgage. On this point the High Court differed, Sir H. G. RICHARDS, *C. J.*, finding that the attestation was not complete, because the attesting witnesses had not actually seen the signatures of the executants put on the deed, and Sir P. C. BANERJI being of opinion that that requirements as well as all others necessary had been observed. *Held*, (upholding the finding of BANERJI, *J.*), that the deed had been duly attested within the meaning of section 59 of the Act. Two at least of the witnesses were well acquainted with the executants, and though they did not see their faces, they recognized their voices and saw them sign the mortgage deed. *Held* (affirming the decision of the High Court), that the plaintiffs (respondents) had not in a former suit insisted on their right as prior mortgagees, but had waived it in favour of the second mortgagees, and so left their claim only partly satisfied, did not, under the circumstances of the case, disentitle them from recovering the unsatisfied portion of the debt in the present suit from the appellants (defendants) who were purchasers of the mortgagor's interest in other portion of the property comprised in the mortgage. PADARATH HALWAI *v.* RAM NAIN UPADHIA (1915) . . **I. L. R. 37 All. 474**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 59**—*concld.*

——— **ss. 60 and 91**—*Redemption, suit for, by the owner of a portion of the equity of redemption—Mortgagee in possession—Vendee from other co-owners of the equity of redemption—Payment by vendee of his share of mortgage-amount to the mortgagee—Possession, surrender of, by mortgagee to vendee of aliquot portion of lands—Objection by mortgagee and vendee to redemption of the whole mortgage and surrender of the whole mortgaged property—Redemption of plaintiff's share only on payment of his share of debt—Possession of lands, right to, by fair partition in a suit for redemption—Equities on partition—Transfer of Property Act (IV of 1882), s. 91, construction of.* Where the plaintiff (an owner of a half-share in the equity of redemption) sued the mortgagee and the owner of the other half of the equity of redemption, who had redeemed one-half of the mortgage, for redemption of the whole mortgage and for the recovery of possession of the whole of the mortgaged property, the High Court on Second Appeal passed a decree for redemption of the plaintiff's half-share on payment of half the mortgage-amount and for partition and delivery of possession of half the mortgaged lands in respect of such share. The owner of a portion of the equity of redemption is not entitled as matter of right to redeem the whole of the mortgage and recover possession of the whole of the mortgaged property, on payment of the whole of the mortgage-amount against the will of the mortgagee in possession and of the vendee of another portion of the equity of redemption who was put in possession of some of the lands by the mortgagee on payment of an aliquot portion of the mortgage-amount. The question whether the Court will allow redemption of the whole of the mortgage at the instance of a person entitled to a part only of the equity of redempton must depend on the circumstances of each case and the rights acquired by the mortgagee or by third persons subsequent to the mortgage. *Kuray Mal* v. *Puran Mal, I. L. R. 2 All. 565, Munshi* v. *Daulat, I. L. R. 29 All. 262* and *Nawab Azimut Ali Khan* v. *Jowahir Singh, 13 Moo. I. A. 404*, followed. *Huthasanan Nambudri* v. *Parameswaran Nambudri, I. L. R. 22 Mad. 209*, dissented from. Section 91 of the Transfer of Property Act explained. RATHNA MUDALI *v.* PERUMAL REDDY (1912) **I. L. R. 38 Mad. 310**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **ss. 60 and 98**—*Mortgage deed, simple and usufructuary combined—No anomalous mortgage—Redeemable—Mortgagee, to be vendee on mortgagor's failure to pay at the stipulated time—Whether mortgage by conditional sale.* Where a usufructuary mortgage deed provided that if the mortgage-amount was not paid on the stipulated date, the mortgage was to work itself out as a sale for the principal amount and further contained a covenant that the mortgagor would pay to the mortgagee the costs of the construction of earthwork, etc., on the date fixed for redemption as per the accounts of the mortgagee. *Held*, that it was not an anomalous mortgage as defined in section 98 of the Transfer of Property Act; the word "not" in section 98 governing equally the words "a combination of the first and third or the second and third of such forms" in the section; and that therefore it was redeemable. *Amarchand* v. *Kila Marar, I. L. R. 27 Bom. 600*, and *Ammanna* v. *Gurumurthi, I. L. R. 16 Mad. 64*, dissented from. *Perayya* v. *Venkata, I. L. R. 11 Mad. 403*, and *Ankinedu* v. *Subbiah, I. L. R. 35 Mad. 744*, followed. *Per* SADASIVA AYYAR, *J.* It is a combination of a simple mortgage and a usufructuary mortgage clogging the equity of redemption. A mortgage deed which begins as a mortgage transaction, cannot be called a mortgage by conditional sale, though it is a mortgage giving the mortgagee, after a certain time and on breach of certain conditions, a right to claim title as vendee. *Per* SPENCER, *J.* It is either a usufructuary mortgage deed with a clog on the equity of redemption or a usufructuary mortgage combined with a mortgage by conditional sale and in either case redeemable under section 60 of the Transfer of Property Act. *Gopalasami* v. *Arunachella, I. L. R. 15 Mad. 304*, referred to. *Kangayga Gurukal* v. *Kalimuthu Annavi, I. L. R. 27 Mad. 526*, distinguished. SRINIVASA AYYANGAR *v.* RADHAKRISHNAM PILLAI (1913) . . . **I. L. R. 38 Mad. 667**

——— **ss. 61, 85 and 99**—*Civil Procedure Code (Act V of 1908), O. XXXIV, rr. 1 and 14—Mortgagee holding two mortgages—Suit on the second mortgage subject to his interest in a prior mortgage — Maintainability.* It is open to a mortgagee to bring a suit for the recovery of his debt by sale of the properties mortgaged to him subject to his interest in a prior mortgage. SUBRAMANIA *v.* BALASUBRAMANIA (1915) **I. L. R. 38 Mad. 927**

——— **ss. 65, 72, 101—**

See MORTGAGE **I. L. R. 38 Mad. 18**

——— **s. 72**—*Mortgage—Right of mortgagee in possession to charge for repairs and additions to the mortgaged property.* During the subsistence of a mortgage of a house, the mortgagee being in possession, a portion of the house, consisting of a *kachcha* room, fell down. The mortgagee replaced this at a cost of Rs. 147-6, making it *pucca*. But he then proceeded to add, without the consent of the mortgagor, an upper storey

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 72**—*concld*

at a cost of Rs. 113 and a staircase costing Rs. 46-8-6, and, on suit by the mortgagor for redemption, he claimed a right to add the various sums so spent to the principal mortgage money, which was Rs. 400. *Held*, that the mortgagee's claim could only be allowed in so far as it fell within the terms of section 72 of the Transfer of Property Act, 1882, and it was allowed as to the first item, but not as to the upper storey or the staircase. *Arunachella Chetti* v. *Sithayi Ammal, I. L. R. 19 Mad. 327* and *Sammo* v. *Abdul Wahid, All. Weekly Notes, 1883, 208*, followed. *Rahmat-ullah* v. *Yusuf Ali, 10 All. L. J. 124*, and *Shepard* v. *Jones*, 21 *Ch. D. 469*, referred to. RUPAN SINGH *v.* CHAMPA LAL (1914) . . **I. L. R. 37 All. 81**

——— **s. 82** — *Mortgage — Contribution—Charge.* In the year 1830 one Tikam Singh, who with several sons constituted a joint Hindu family, executed a mortgage of a village forming part of the joint family property. In 1889, he, with five of his sons, executed a second mortgage of the same village. In 1891, he, with two of his sons, executed a third mortgage of the same village. Tikam Singh died and the sons partitioned the village amongst them into several mahals. The first mortgagee brought a suit for sale on his mortgage, and having obtained a decree brought to sale the share of Het Singh, one of the brothers, and the mortgage was discharged. Thereafter Het Singh brought a suit for contribution and obtained a decree. After the satisfaction in this manner of the mortgage of 1880, the other brothers discharged the later mortgages of 1889 and 1891 and then brought the present suit for contribution against Het Singh. *Held*, that in these circumstances the plaintiffs were not entitled to a decree against Het Singh. *Har Prasad* v. *Raghunandan Prasad, I. L. R. 31 All. 166*, referred to. KASHI RAM *v.* HET SINGH (1914) **I. L. R. 37 All. 101**

——— **s. 85—**

See HINDU LAW—MORTGAGE **I. L. R. 42 Calc. 1068**

——— **ss. 85 to 89—**

See LIMITATION **I. L. R. 42 Calc. 776**

——— **ss. 88, 89**—*Application for order absolute for sale — Limitation—Limitation Act (XV of 1877), Sch. 11, Art. 179.* Where a preliminary decree for sale on a mortgage was passed on 28th September 1898: *Held*, that an application for order absolute made more than three years after that date was barred by limitation—such an application being a proceeding in execution. *Kista Bar.* v. *Banamoyi Debia, 19 C. W. N. 470*, reversed. *Munna Lal* v. *Sarat Chandra Mukerjee, 21 C. L. J. 118, s. c. 19 C. W. N. 561*, referred to. *Batuk Nath* v. *Munni Dei, I. L. R. 36 All. 284 : s. c. 18 C. W. N. 740*, and *Abdul Majid* v. *Jawahir Lall, I. L. R. 36 All. 350 ; s. c. 18 C. W. N. 963*, followed. KISTA BAR *v.* BANAMOYI DEBIA (1915) . . . **19 C. W. N. 649**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 89—*Execution of a decree—Benamidar. Held,* that in an application under s. 89 of the Transfer of Property Act the fact that the court came to the conclusion that the applicants transferees, were *benamidars* was no bar to its granting an order absolute. A *benamidar* is competent to take out execution of a decree. *Intikhab Husain* v. *Rafi-un-nissa, All. Weekly Notes, (1907), s. 39, Yad Ram* v. *Umrao Singh, I. L. R. 21 All. 380, Nand Kishore Lal* v. *Ahmad Ata, I. L. R. 18 All. 69, Bachcha* v. *Gajadhar Lal, I. L. R. 28 All. 44, Parmeshwar Datt* v. *Anardan Datt, I. L. R. 37 All. 113,* referred to. KAMTA PRASAD *v.* INDOMATI (1915)

I. L. R. 37 All. 414

——— s. 99—

See MORTGAGE . . **I. L. R. 42 Calc. 730**

——— *Sale of mortgaged property in contravention of terms of section—Right of representatives of mortgagor to redeem.* If a mortgagee brings the mortgaged property to sale in contravention of the provisions of s. 99 of the Transfer of Property Act, 1882, such sale is not void, but merely voidable. If such a sale is confirmed, the auction purchaser, whether he be an outsider or the mortgagee bidding with the leave of the Court, obtains an indefeasible title, and the right of the mortgagor and those who represent him to redeem is absolutely extinguished. *Tara Chand* v. *Imdad Husain, I. L. R. 13 All. 325, Muhammad Abdul Rashid Khan* v. *Dilsukh Rai, I. L. R. 27 All. 517, Madan Makund Lal* v. *Jamna Kaulapuri, 2 All. L. J. 123,* and *Mangli Prasad* v. *Pati Ram, 1 All. L. J. 360,* followed. *Jhabba Lal* v. *Chhajju Mal, 4 All. L. J. 787,* overruled. *Sardar Singh* v. *Ratan Lal, I. L. R. 36 All. 516, Ashutosh Sikdar* v. *Behari Lal Kirtania, I. L. R. 35 Calc. 61,* and *Pancham Lal Chowdhry* v. *Kishun Pershad Misser, 14 C. W. N. 579,* referred to. LAL BAHADUR SINGH *v.* ABHARAN SINGH (1915) . . . **I. L. R. 37 All. 165**

——— **ss. 106, 107 and 116**—*Lease without registered instrument for purposes other than agriculture or manufacture at a fixed rent a year without any settlement as to duration of tenancy—Effect of holding over with acceptance of rent by landlord—Notice necessary to terminate tenancy, nature of—Notice signed by am-muktear if valid—Fifteen days from date of notice, calculation of.* The defendant took the premises in suit for a stationery shop as a tenant from the commencement of the Bengali year, the rent being fixed at a certain amount a year, but the period during which the tenancy was to continue was not settled. The tenant continued in occupation after the end of the year and the landlords accepted rent for the next year. The plaintiff landlords subsequently served a notice to quit by registered post. The notice was signed by an *am-muktear* and was dated the 16th Baisakh and called upon the defendant to vacate the premises within the 31st Baisakh. The registered cover which was addressed to the defendant at his place of business was returned to the sender

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 106—*concld.*

by the Postal authorities with an endorsement that the addressee had refused to accept it. There was no oral evidence to show where the cover was posted or when and where it was tendered to the defendant. On the cover were the seals of the office of posting and the office of destination as also an endorsement that the letter was returned as the addressee refused to receive it, the seals and the endorsement bearing date corresponding to the date of the notice: *Held,* that under s. 107 of the Transfer of Property Act which was in force at the time a lease of immoveable property from year to year or for any time exceeding one year or reserving a yearly rent could be made only by a registered instrument and consequently the defendant became a tenant for one year only and in the absence of an agreement to the contrary within the meaning of s. 116 of the Act, the effect of his holding over was that after the expiry of the year in which the tenancy took effect, it was renewed from month to month and was terminable by the lessors by fifteen days' notice expiring with the end of a month of the tenancy. That the notice was a fifteen days' notice and was properly signed. It was not intended to lay down in *Subadani* v. *Durga Charan, I. L. R. 28 Calc. 118 : s. c., 4 C. W. N. 790,* that in calculating the 15 days the day on which the notice was served as also the date on which the notice expired were both to be excluded. GOBINDA CHANDRA SHAHA *v.* DWARKA NATH PATITA (1914)

19 C. W. N. 489

——— s. 108—

See LANDLORD AND TENANT.

I. L. R. 38 Mad. 710

1. ——— *Working of new mines by lessee—Mining lease from the holder of maintenance-grant for life—Absence of express authorisation to work new mines in deed of grant—Contract of parties, reliance on, for ascertaining intention of grantor—Open mine, what is.* Three of the principal defendants held a mining lease of the disputed properties from defendant No. 1 to whom the property had been given for her maintenance for life by the former proprietor. The deed did not contain any express provision authorising the grantee to open new mines and to appropriate the minerals therefrom. The plaintiff who was a proprietor by right of purchase sued for a declaration that these four defendants had no right to open new mines and to raise minerals therefrom on the disputed property, also for a perpetual injunction to restrain them from opening and working new mines and from further working the new mines which they had opened. *Held,* that s. 108 of the Transfer of Property Act which defines the rights and liabilities of lessor and lessee provides in cl. (*o*) that in the absence of a contract or local usage to the contrary the lessee must not work mines or quarries not open when the lease was granted and no question of local usage arising

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 108**—*contd.*

in the present case and there being no express provision authorising the grantee to open new mines and to appropriate the minerals therefrom in the deed which was one for maintenance for the life of the grantee, the grantee had no right to grant a mining lease for the purpose of opening and working new mines. Circumstances under which a mine may be said to be open considered. CHRISTIAN *v.* NARBADA KOERI (1914)

19 C. W. N. 796

2. ——— *Fixture, right of tenant to remove—Acquisition of land with building by Government—Tenant if only entitled to price of material. Held,* (as to the contention that under s. 108 of the Transfer of Property Act, the right of the tenant to remove fixtures must be exercised during the continuance of the lease), that the provisions of s. 108 of the Transfer of Property Act are suject to local usage, and in the present case the leases not being determined by any notice to quit and the decree in the mortgage-suit under which the respondents lost their right not having given them an opportunity to remove the building, they should be allowed to remove them unless the appellant chose to take them on payment of compensation. In the circumstances of the case, the respondents were given one-half of the amount awarded on account of the building. KANAILAL JALAN *v.* RASIK LAL SADHUKHAN (1914)

19 C. W. N. 361

——— **ss. 108** (*e*), **106**—*Lease of colliery—Destruction by fire—Notice by lessee to determine lease if should be 15 days' notice.* A notice by the lessee under s. 108 (*e*) of the Transfer of Property Act avoiding the lease on the ground of destruction of the lease-hold property by irresistible force takes effect immediately on service. S. 106 of the Act has no application to such a notice. DAMODA COAL COMPANY LIMITED *v.* HURMOOK MARWARI (1915) . . . **19 C. W. N. 1019**

——— **s. 108** (*j*)—*Lessee or licensee—Agricultural land let for building purposes under special agreement and afterwards included in neighbouring town.* Some fifty years ago, by an agreement between the Government, the zamindars and certain butchers, a certain area of cultivated land adjoining the city of Allahabad was let in plots to the butchers for building purposes at a uniform rent of Rs. 10 per bigha. There was also a proviso against arbitrary enhancement of the rent. Subsequently, the land upon which the butchers had settled was included in the municipal limits of the city of Allahabad, and was called muhulla Atala. One of the butchers having sold his house, the zamindars sued him and his vendee under the terms of the wajib-ul-arz claiming either one-fourth of the price, or, in the alternative, that the site might be cleared and possession made over to them. *Held,* that in the circumstances these sites were not subject to the ordinary law with reference to village sites occupied by agricultural tenants, but the butchers must be taken to be lessees, and in the absence of a contract to the contrary their rights as such were transferable without reference to the zemindars. ABDUL HAQ *v.* DATTI LAL (1914)

I. L. R. 37 All. 144

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 108**—*concld.*

——— **s. 111** (*d*) (*f*)—*Merger, doctrine of—Application to tenures in India—Equitable considerations.* The predecessors of the defendants, who held a *malguzari* tenure directly under the 16 as. zamindar, afterwards took a *mokurari* lease from the *putnidar* under 8 as. 1 gd. maliks. *Held,* that the conditions which would make s. 111, cl. (*d*), or s. 111, cl. (*f*), of the Transfer of Property Act, applicable did not exist in the case and the *malguzari* interest did not merge in the *mokurari* either under these provisions or under the general law. The English doctrine of merger has never been held to apply to land tenures in India in their entirety. On the other hand very eminent Judges have doubted that it does. *Woomesh Chandra Goopto* v. *Raj Narain Ray, 10 W. R. 15,* and *Jibanti Nath Khan* v. *Gocool Chandra Choudhuri, I. L. R. 19 Calc. 760,* referred to. *Raja Kishen Datt Ram* v. *Raja Mumtaz Ali, I. L. R. 5 Calc. 198,* was not decided on the ground of merger. In *Promatho Nath Mitter* v. *Kali Prasanna Choudhury, I. L. R. 28 Calc. 744, Surja Narain Mandal* v. *Nanda Lal Sinha, I. L. R. 33 Calc. 1212,* and *Ulfat Hussain* v. *Gayani Dass, I. L. R. 36 Calc. 802,* apart from the application of s. 111, cl. (*d*), of the Transfer of Property Act, there was no equitable consideration to prevent the merging of rights, whereas in the present case there was no equitable consideration to attract the application of the doctrine of merger. In deciding whether there is a merger in equity what must be first looked at is the intention of the parties and if that be not expressed, then the Court looks to the benefit of the person in whom the interests coalesce. *Gokaldas Gopal Das* v. *Puran Mal, I. L. R. 10 Calc. 1035,* referred to. AMATOO *v.* SHEIKH MUKSUD ALI (1914) . . . . **19 C. W. N. 435**

——— **s. 111** (*g*)—

See LESSOR AND LESSEE.

I. L. R. 38 Mad. 445

——— **s. 117**—

See UNDER-RAYATI HOLDING.

I. L. R. 42 Calc. 751

——— **ss. 118, 119, 120, 54 and 55, cl. 6** (*b*)—*Exchange of lands of the value of one hundred rupees or upwards—No registered instrument—Oral transfer, invalid—Parties placed in possession of the lands—Sale by one of the parties of lands obtained on exchange—No estoppel against the transferor or his creditor—No estoppel against statute—No charge for the value or price of the lands on the date of the transactions.* An exchange of immoveable property of the value of one hundred rupees and upwards can be made only by a registered instrument under

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concld.*

——— **s. 118**—*concld.*

ss. 118 and 54 of the Transfer of Property Act. No estoppel can be pleaded against the directions and the prohibitions enacted by the statute law and against the rights accruing to any party by reason of such directions and prohibitions. A party to an exchange which is not valid in law is not entitled to a charge on the property obtained by him in exchange for the price of such property on the date of the exchange under ss. 120 and 55, cl. (*b*) of the Transfer of Property Act. *Kurri Veerareddi* v. *Kurri Bapireddi, I. L. R. 29 Mad. 336*, followed. *Ram Bakhsh* v. *Mughlani Khanam, I. L. R. 26 All. 266*, dissented from. *Karalia Nanubhai* v. *Mansukhram, I. L. R. 24 Bom. 400*, distinguished. *Muthe Venkatachellapathy* v. *Pyinda Venkatachellapathy, 23 Mad. L. J. 652*, referred to. CHIDAMBARA CHETTIAR *v.* VAIDILINGA PADAYACHI (1913) **I. L. R. 38 Mad. 519**

——— **ss. 130 and 134**—*Mortgage in writing of a promissory note—Assignees' right and liability to sue on the promissory note.* By virtue of ss. 130 and 134 of the Transfer of Property Act (IV of 1882), a mortgage in writing of a promissory note, executed in favour of the mortgagor by a third party, creates an assignment of the promissory note in favour of the mortgagee even without an endorsement, and as the right of the promissee to sue on the note becomes vested in the mortgagee, the mortgagee alone is entitled to sue on the note and in taking accounts he is liable to be debited with the amount of the note if he without any justification allows the recovery of debt barred by limitation. *Mulraj Khatau* v. *Viswanath Prabhuram, I. L. R. 37 Bom. 198*, followed. *Shyam Kumari* v. *Rameshwar Singh, I. L. R. 32 Calc. 27*, followed. MUTHUKRISHNIER *v.* VEERARAGHAVA IYER (1913) **I. L. R. 38 Mad. 297**

TRANSFERABILITY.

See OCCUPANCY HOLDING. **I. L. R. 42 Calc. 172**

See PALAS OR TURNS OF WORSHIP. **I. L. R. 42 Calc. 455**

See UNDER-RAIYATI HOLDING. **I. L. R. 42 Calc. 751**

TRESPASS.

See ARREST OF SHIP. **I. L. R. 42 Calc. 85**

See JURISDICTION. **I. L. R. 42 Calc. 942**

TRESPASSER.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8, EXCEP. **I. L. R. 38 Mad. 843**

——— **tenant as**—

See LIMITATION ACT (IX OF 1908), S. 28, ART. 47 . **I. L. R. 38 Mad. 432**

TRIALS.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 255 AND 342. **I. L. R. 38 Mad. 302**

——— **conduct of**—

See PRESIDENCY MAGISTRATES. **I. L. R. 42 Calc. 313**

TRUST.

See TRUST FUND.

See CONTRACT **I. L. R. 38 Mad. 788**

See LIMITATION ACT (IX OF 1908), S. 10, SCH. I, ARTS. 14, 120 **I. L. R. 39 Bom. 572**

See MAHOMEDAN LAW—WAKF **I. L. R. 42 Calc. 933**

TRUST FUND.

See TRUSTEE . **I. L. R. 38 Mad. 71**

TRUSTEE.

See LIMITATION ACT (ACT XV OF 1877), SCH. II, ART. 120. **I. L. R. 38 Mad. 260**

See RELIGIOUS ENDOWMENTS ACT (XX OF 1863), S. 3. **I. L. R. 38 Mad. 1176**

——— **alienee of**—

See PARTIES . **I. L. R. 42 Calc. 1135**

——— **death of, pending appeal**—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 92 AND 93. **I. L. R. 38 Mad. 1064**

——— **suit to remove**—

See PARTIES . **I. L. R. 42 Calc. 1135**

——— *Breach of trust—Liability in damages—Failure to invest trust funds in authorised securities—Indian Trusts Act (II of 1882), s. 20—Failure of unauthorised security—Degree of care and prudence—Indian Trusts Act (II of 1882), ss. 15 and 20—Fund 'to be applied immediately or at an early date,' construction of—Fund payable to minor, if payable to guardian—Liability of trustee for interest—Interest on damages—Indian Trusts Act (II of 1882), ss. 41 and 23.* A testator appointed certain persons as trustees and directed them to realise an amount payable by the Oriental Life Assurance Company and to pay a sum of Rs. 200 to his brother, another sum of Rs. 400 to his daughter for her bride's jewels and the remainder to his minor son. The trustees realised the amount due from the Insurance Company, and after paying Rs. 200 to the testator's brother, invested the balance on one year's fixed deposit with Messrs. Arbuthnot & Co., who were then believed to be in very good credit. After the deposit had been renewed several times, Messrs. Arbuthnot & Co. became insolvent and the trust fund was lost. The plaintiff, who was appointed by the Court as trustee in the place of the defendants (who were the previous trustees appointed under the will) brought this suit against the latter for damages for loss of the trust funds

TRUSTEE—*concld.*

by reason of their breach of trust. The District Judge decreed damages against the defendants who preferred a Second Appeal to the High Court. *Held*, that the defendants were liable in damages for breach of trust. As regards the amount payable to the minor son, it could not be applied for the purposes of the trust immediately or at an early date, as the trustees could not pay the money to the minor until the attainment of his majority, nor could it be paid to the guardian of the minor during minority. S. 41 of the Trusts Act permits payment to the guaridan only of the income of the property. The specific provisions contained in the other sections of the Indian Trusts Act are as obligatory as the general provisions of s. 15 of the said Act. The defendants were bound to invest the trust moneys in the securities specified in s. 20 of the Indian Trusts Act, and having failed to do so, they must be held to have committed a breach of trust, although they had acted honestly and with the prudence which an ordinary man would exercise in the conduct of his own affairs. A trustee guilty of breach of trust by not investing trust funds as required by s. 20 of the Indian Trusts Act is not exempted by s. 15 thereof from liability in damages. The Indian Courts have not been given the power (conferred by statutes in England) to protect trustees in any case where a clear breach of trust has been committed. Where a trustee invests money in an unauthorized security, this must be treated as tantamount to failure to invest within the terms of s. 23, cl. (*c*), of the Trusts Act, and he is liable to pay interest under that section. It may be doubted whether the rule disentitling the beneficiary to interest except in the cases enumerated in s. 23, could be applied where the trust money has been lost in an unauthorised investment. The Court should have power in such cases to award interest as damages. TIRUPATIRAYUDU NAIDU *v.* LAKSHMINARASAMMA (1912) . . . . **I. L. R. 38 Mad. 71**

TRUSTS ACT (II OF 1882).

——— **ss. 15 and 20—**

See TRUSTEE . **I. L. R. 38 Mad. 71**

——— **ss. 86, 89, 90, 91, and 96—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 91 . **I. L. R. 38 Mad. 310**

TURNS OF WORSHIP.

See PALAS OR TURNS OF WORSHIP.

U

ULTRA VIRES.

See LIMITATION ACT (IX OF 1908), SCH. 1, ART. 14 . **I. L. R. 39 Bom. 494**

See MERCHANT SEAMEN ACT (I OF 1859), S. 83, CL. (*4*) . **I. L. R. 39 Bom. 558**

ULTRA VIRES—*concld.*

See RAILWAYS ACT (IX OF 1890), SS. 72, 47 . . **I. L. R. 39 Bom. 485**

UNCONSCIONABLE BARGAIN.

See INTEREST . . **I. L. R. 42 Calc. 652**

UNDER-RAIYAT.

1. ——— *If may acquire occupancy right—Transferability of under-raiyat's interest.* The provisions of the Bengal Tenancy Act show that an under-raiyat may, under certain circumstances, acquire an occupancy right. If he does acquire such a right, that right may be transferable by custom or local usage, but there is no authority for the proposition that the interest of an under-raiyat is *ipso facto* transferable. AKHIL CHANDRA BISWAS *v.* HASAN ALI SADAGAR (1913) . . . . . **19 C. W. N. 246**

2. ——— *Acquisition of status of.* A person in whose favour a permanent sub-lease has been granted by a raiyat acquires on payment of rent to his grantor the status at least of an under-raiyat, if he is shown to have been in possession of the holding from before the lease. JANAKINATH HORE *v.* PRABHASINI DASI (1915) **19 C. W. N. 1077**

3. ——— *Permanent lease by, if valid—Suit by lessee to recover possession from lessor.* As between grantor and grantee, a permanent lease granted by an under-raiyat is a valid document, and the grantee can recover possession of the land from the grantor on the strength of such a lease. *Gurudas Das* v. *Kalidas Changa, 18 C. W. N. 882*, followed. PARUSHULLA SHEIKH *v.* SITAL CHANDRA DAS (1915) **19 C. W. N. 1110**

UNDER-RAYATI HOLDING.

——— *Transferability—Transfer of Property Act (IV of 1882), s. 117—Agricultural lands—Relinquishment or abandonment, what constitutes.* An under-raiyati holding is not transferable. What is relinquishment or abandonment depends on the substantial effect of what has been done in each case. When a tenure or holding, apart from the Transfer of Property Act, is not transferable, it cannot become so unless it is expressly made so by some other statute. If it had been intended to make holdings transferable which were before non-transferable, the Legislature in framing the Bengal Tenancy Act would have said so. S. 117 of the Transfer of Property Act excludes agricultural land from the operation of the rule which makes leasehold property transferable. *Hiramoti Dassya* v. *Annoda Prosad Ghose, 7 C. L. J. 555*, followed. AMINNESSA *v.* JINNAT ALI (1914) . **I. L. R. 42 Calc. 751**

UNDER-TENURE.

See HOMESTEAD LAND.
I. L. R. 42 Calc. 638

UNDERTAKING.

——— unconditional, to pay—

See VARTHAMANAM.
I. L. R. 38 Mad. 660

UNDUE INFLUENCE.

See CIVIL PROCEDURE CODE (ACT X OF 1908), O. XXII, R. 3.
I. L. R. 38 Mad. 850

See HINDU LAW—WILL.
I. L. R. 39 Bom. 441

See INTEREST.
I. L. R. 42 Calc. 652, 690

See LEASE . I. L. R. 38 Mad. 321

See LIMITATION ACT (XV OF 1877), SCH. II, ART 91 . . I. L. R. 38 Mad. 321

1. ——— *Contract—Illegal composition of non-compoundable offence—Stifling prosecution—Suit for refund—Contract Act (IX of 1872), ss. 16, 19.* No refund of money or return of security, given under agreement not to prosecute a criminal case, will be allowed unless circumstances disclose pressure or undue influence. Mere fear of punishment in a criminal case does not constitute undue influence. *Jones* v. *Merionethshire Building Society*, [1892] *1 Ch. 173*, referred to. AMJADENNESSA BIBI *v.* RAHIM BUKSH SHIKDAR (1914) . . I. L. R. 42 Calc. 286

2. ——— The Judicial Committee did not approve of the idea that in India the law would make the possession of reputation or high standing an element of suspicion. BAL GANGADHAR TILAK *v.* SHRI SHRINIWAS PANDIT (1915) . . . . . 19 C. W. N. 729

UNITED PROVINCES AND OUDH ACTS.

——— 1881—XII.

See NORTH-WESTERN PROVINCES RENT ACT.

——— 1881—XVIII.

See CENTRAL PROVINCES LAND REVENUE ACT.

——— 1899—III.

See UNITED PROVINCES COURT OF WARDS ACT.

——— 1901—II.

See AGRA TENANCY ACT.

——— 1903—II.

See BUNDELKHAND ALIENATION ACT.

UNITED PROVINCES COURT OF WARDS ACT (III OF 1899).

——— ss. 16-20—*Claim not notified—Maintainability of suit—Admissibility of documents.* S. 20 of the Court of Wards Act, 1909, applies only to cases, where persons who have notified their claims under s. 16 of the said Act have failed to produce their documents. Where the property

UNITED PROVINCES COURT OF WARDS ACT (III OF 1899)—*concld.*

——— s. 16—*concld.*

of the debtor was taken over by the Court of Wards at a time when the Court of Wards Act of 1899 was in force and the creditor did not notify his claim under s. 16, but brought a suit upon his bonds after the property was released by the Court of Words, *held* that the bonds were admissible in evidence and the suit was maintainable. *Collector of Ghazipur* v. *Balbhaddar Singh, 10 All. L. J. 234*, overruled. ASHRAF ALI *v.* KALYAN DAS (1915) . . . . I. L. R. 37 All. 585

——— s. 48—*Notice of suit—Amendment of plaint—Whether fresh notice rendered necessary by amendment.* Certain persons who intended bringing a suit against a ward under the Court of Wards upon a promissory note of date the 20th of November, 1909, served upon the Collector by way of notice under s. 48 of the Court of Wards Act, 1899, a copy of the proposed plaint, in which they stated :—"For a long time there were money dealings between the shop of the plaintiffs and Kunwar Pohkar Singh, caste Thakur, resident of mauza Ghungchai. Accordingly the said Pohkar Singh, having adjusted his account under the former promissory note, dated the 15th of November, 1907, executed a promissory note on the 20th of November, 1909." In the course of the suit the plaintiffs discovered that they could not succeed on the promissory note of the 20th of November, 1909, inasmuch as Pohkar Singh was already a Ward of Court at the date of its execution, and accordingly asked and obtained leave to amend their plaint and base their claim entirely on the promissory note of the 15th of November, 1907. *Held*, that in these circumstances no fresh notice to the Court of Wards was rendered necessary by the amendment of the plaint. *McInerny* v. *The Secretary of State for India, I. L. R. 38 Calc. 797*, referred to. BALDEO PRASAD *v.* THE COLLECTOR OF PILIBHIT (1914) . I. L. R. 37 All. 13

UNITY OF OBJECT.

See MISJOINDER . I. L. R. 42 Calc. 760

USUFRUCTUARY MORTGAGE.

——— *Dispossession of mortgage by a stranger, adverse to mortgagor from the time of his knowledge.* Where a trespasser dispossesses a mortgagee in possession and continues in possession asserting a title adverse to the mortgagor also, such dispossession will be adverse to the mortgagor from the time the mortgagor has knowledge of the assertion (though he may not be then entitled according to the terms of the mortgage to recover possession from the mortgagee). The onus is on the trespasser to prove not only that he asserted a right adverse to the mortgagor but also that the latter knew it. PERIYA AIYA AMBALAM *v.* SHUNMUGASUNDARAM (1913) . . . . I. L. R. 38 Mad. 903

USURIOUS INTEREST.

See INTEREST . I. L. R. 42 Calc. 690

USURY.

See JURISDICTION.

I. L. R. 42 Calc. 116

V

VALUATION.

See COURT FEES ACT (VII OF 1870), SS. 7, CL. IV (*f*), 11.

I. L. R. 39 Bom. 545

VALUATION OF SUIT.

See COURT-FEE . **I. L. R. 42 Calc. 370**

VARTHAMANAM (OR LETTER).

——————— *Not stamped—Unconditional undertaking to pay—Promissory note, inadmissible in evidence—Evidence Act (I of 1872), s. 91—Suit on original liability not maintainable.* A *varthamanam* or letter which says, "Amount of cash borrowed of you by me is Rs. 350. I shall in two weeks' time returning this sum of rupees three hundred and fifty with interest thereon at the rate of Rupee one per cent. per month, get back this letter," amounts to an unconditional undertaking to repay borrowed money and is therefore a promissory note and not merely an offer to borrow or an acknowledgment of indebtedness. *Bharata Pisharodi* v. *Vasudevan Nambudri, I. L. R. 27 Mad. 1,* distinguished. *Tirupathi Goundan* v. *Rama Reddi, I. L. R. 21 Mad. 49,* doubted. When such a document is inadmissible for want of a stamp, to allow a suit as one on "account for money had and received," concealing the real contract of loan which had been reduced to the form of a document would nullify s. 91 of the Indian Evidence Act (I of 1872). *Pothi Reddi* v. *Valayudasivan, I. L. R. 10 Mad. 94,* followed. *Chinnappa Pillai* v. *Muthuraman Chettiar, 9 Mad. L. T. 281,* and *Mallaya* v. *Ramayya, 21 Mad. L. J. 462,* approved. *Krishnaji* v. *Rajmal, I. L. R. 24 Bom. 360,* and *Baij Nath Das* v. *Salig Ram, 16 I. C. 33,* dissented from. Doctrines of English Courts of Equity are not to be imported into the construction of such a document. *Per* SPENCER, *J.*—The mere use of the word *varthamanam,* instead of promissory note, will not deprive the document of its real character of promissory note if its terms show that it is such. MUTHU SASTRIGAL *v.* VISVANATHA PANDARASANNADHI (1913) . . **I. L. R. 38 Mad. 660**

VATANDAR.

——————— **mortgage by—**

See HEREDITARY OFFICES ACT (BOM. III OF 1874), S. 5.

I. L. R. 39 Bom. 587

VENDEE.

——————— **payment by—**

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 60 AND 91.

I. L. R. 38 Mad. 310

VENDOR AND PURCHASER.

——————— *Conveyance by executor as beneficial owner—Construction of deed of sale—Inconsistency between recitals and operative part of deed—Omission to state expressly that he was conveying the property sold in his capacity of executor. Held* (reversing the appellate decision of the High Court, and restoring that of the first Court), that on the construction of a deed of sale, and on the evidence in, and under the circumstances of the case, the title vested in an executor passed to the appellants under the deed, by which he together with other vendors purported to convey "all his estate, right, title, claim, and demand whatsoever" in the property sold, although he did not expressly state therein that he was conveying the property in his capacity as executor. The plain legal interpretation of the deed should not be allowed to be affected by speculations as to what particular rights existing in the various vendors were present to the minds of some or all of the parties to the conveyance at the date of its execution. The deed stated plainly that whatever right or title the vendors possessed was to go to support the conveyance, and it is a settled rule that the meaning of a deed is to be decided by the language used interpreted in a natural sense. BIJRAJ NOPANI *v.* PURA SUNDARY DASEE (1914)

I. L. R. 42 Calc. 56

VENUE.

See JURISDICTION.

I. L. R. 42 Calc. 942

VESTING ORDER.

——————— **effect of—**

See INSOLVENCY . **I. L. R. 42 Calc. 72**

VILLAGE.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8 . **I. L. R. 38 Mad. 891**

——————— *Proprietors of, who are—Persons who do not pay land revenue, but only tirni (grazing) charges, if entitled to share on partition of shamilat land.* Persons who merely paid *tirni* (grazing dues) to the Government and who did not pay any land revenue assessed on the village were not proprietors of the village and were not as such entitled to a share on partition of the *shamilat* land of the village. BAGGA *v.* SALEH (1915) . . . . **19 C. W. N. 1023**

VILLAGE CHAUKIDARI ACT (BENG. VI OF 1870).

——————— **ss. 1, 48 to 52, 58—**

See CHAUKIDARI CHAKRAN LANDS.

I. L. R. 42 Calc. 710

VRITTI.

——————— *Alienation in special cases under special conditions—Local usage and custom.* As a general rule *vrittis* are inalienable. They may be alienated in special cases and under special conditions provided that such alienations can be supported by local usage and custom. *Rajaram* v. *Ganesh, I. L. R. 23 Bom. 131,* referred to.

VRITTI—*concld.*

MANJUNATH SUBRAYABHAT *v.* SHANKAR MANJAYA (1914) . . . . **I. L. R. 39 Bom. 26**

W

WAGER.

See PAKKI ADAT TRANSACTIONS.
I. L. R. 39 Bom. 1

WAIVER.

See CIVIL PROCEDURE CODE (ACT V OF 1908), S. 86 . **I. L. R. 38 Mad. 635**

See LESSOR AND LESSEE.
I. L. R. 38 Mad. 445

See LIMITATION . **I. L. R. 38 Mad. 374**

See MADRAS CIVIL COURTS ACT (III OF 1873), S. 17 . **I. L. R. 38 Mad. 531**

See RESUMPTION. **I. L. R. 39 Bom. 279**

——— of right of priority in favour of second mortgagee—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 59 . **I. L. R. 37 All. 474**

——— *Waiver, what is.* A waiver must be an intentional act with knowledge. A person cannot be barred of his remedy on the ground of waiver unless at the time of the alleged waiver he is shown to have been fully cognizant of his right and of the facts of the case. SYAMA CHARAN BAISYA *v.* PRAFULLA SUNDARI GUPTA (1915) . . . . **19 C. W. N. 882**

WAJIB-UL-ARZ.

See PRE-EMPTION.
I. L. R. 37 All. 129, 472, 524, 573

See PRE-EMPTION—WAJIB-UL-ARZ.

WAKF.

See MAHOMEDAN LAW—WAKF.

See WAQF.

See MUSALMAN WAKF VALIDATING ACT (VI OF 1913), S. 3.
I. L. R. 39 Bom. 563

——— validity of—

See MAHOMEDAN LAW—WAKF.
I. L. R. 42 Calc. 93
3

WAKF VALIDATING ACT (VI OF 1913).

——— *If would operate retrospectively.* The Wakf Validating Act (VI of 1913) has no retrospective effect. RAHIMUNISSA BIBI *v.* SHAIKH MANIK JAN (1914) . **19 C. W. N. 76**

——— s. 3—*Act, if operates retrospectively.* The operation of the Musalman Wakf Validating Act of 1913 is prospective and not retrospective and it did not affect a previous conclusive decision of the Court declaring a wakf to be invalid. MAHOMED BUKTH MAJUMDAR *v.* DEWAN AJMON RAJA (1915) . . . . . **19 C. W. N. 967**

WAQF.

See CIVIL PROCEDURE CODE (1908), S. 92.
I. L. R. 37 All. 86

See MAHOMEDAN LAW—WAKF.

See WAKF.

WARRANT.

See CRIMINAL PROCEDURE CODE, S. 75.
19 C. W. N. 224

——— *Validity of warrant—Warrant, signed but not sealed—Arrest under such warrant—Rescue and escape from lawful custody—Criminal Procedure Code (Act V of 1898), s. 75 (1)—Penal Code (Act XLV of 1860), s. 225 B.* Under s. 75 of the Criminal Procedure Code, the affixing of the seal of the Court is essential to the validity of a warrant. An arrest under a warrant duly signed but not sealed is, therefore, illegal: and a conviction under s. 225B of the Penal Code is bad in law. MAHAJAN SHEIKH *v.* EMPEROR (1914)
I. L. R. 42 Calc. 708

WASTE LANDS.

See MADRAS ESTATES LAND ACT (I OF 1908), S. 8 . **I. L. R. 38 Mad. 891**

WATER.

See EASEMENT . **I. L. R. 42 Calc. 164**

See GRANT, CONSTRUCTION OF.
I. L. R. 38 Mad. 424

——— for wet lands to supply free of charge undertaking by Government—

See MADRAS IRRIGATION CESS ACT (VII OF 1865), S. 1 . **I. L. R. 38 Mad. 997**

WATERFLOW.

——— *Agricultural lands, upper and lower, owners of—Right of upper owner to drain his water naturally on lower land—Indian Easements Act (V of 1882), s. 7, ill. (a) and (i).* The ruling in *Mahamahopadhyaya Rangachariar* v. *The Municipal Council of Kumbakonam, I. L. R. 29 Mad. 539*, distinguished. An owner of upper agricultural land is entitled to let his water flow in its *natural* course without any obstruction by the owner of the lower land, and the lower owner is not entitled to raise any bund on his land which will have the effect of seriously interfering with the upper owner's cultivation and *Subramaniya Ayyar* v. *Ramachandra Rau, I. L. R. 1 Mad. 335*, and *Abdul Hakim* v. *Ganesh Dutt, I. L. R. 12 Calc. 323*, followed. *Sangana Reddiar* v. *Perumal Reddiar (1910), Mad. W. N. 545*, dissented from. RAMASAWMY *v.* RASI (1913)
I. L. R. 38 Mad. 149

WIDOW.

See BABUANA GRANT.
I. L. R. 42 Calc. 582

See HINDU LAW—ADOPTION.
I. L. R. 39 Bom. 441

See HINDU LAW—DEBT.
I. L. R. 39 Bom. 113

WIDOW—*concld.*

See HINDU LAW—INHERITANCE.
I. L. R. 42 Calc. 1179

See HINDU LAW—WILL.
I. L. R. 37 All. 422

——— **adoption by—**

See APPEAL TO PRIVY COUNCIL.
I. L. R. 38 Mad. 406

——— **adoption by, her brother's son—**

See HINDU LAW—ADOPTION.
I. L. R. 37 All. 359

——— **alienation by—**

See APPEAL TO PRIVY COUNCIL.
I. L. R. 38 Mad. 406

See HINDU LAW—ALIENATION.
I. L. R. 37 All. 369

——— **devise to—**

See HINDU LAW—WILL.
I. L. R. 42 Calc. 561

——— **maintenance of—**

See HINDU LAW—MAINTENANCE.
I. L. R. 38 Mad. 153

WIFE.

——— **gift by, to husband—**

See MALABAR LAW.
I. L. R. 38 Mad. 79

——— **interest taken by—**

See MALABAR LAW.
I. L. R. 38 Mad. 79

WILL.

COL.
1. CONSTRUCTION 463
2. PROBATE 465
3. REVOCATION 468

See GUARDIAN. **I. L. R. 42 Calc. 953**

See HINDU LAW—MINOR.
I. L. R. 38 Mad. 166

See HINDU LAW—WILL.

See JOINT HINDU FAMILY.
I. L. R. 39 Bom. 245

See OCCUPANCY HOLDING.
I. L. R. 42 Calc. 254

See WILL OF PARSI.

——— **revocation of—**

See HINDU LAW—WILL.
I. L. R. 38 Mad. 369

——— **validity of—**

See PROBATE . **I. L. R. 42 Calc. 480**

1. CONSTRUCTION.

1. ——— *Construction—Money belonging to testator but not known to him—Residuary clause, not passing by—Rule of construction of residuary clause, in a will made in the town of Madras.* A testator in the town of Madras after stating in the preliminary clauses the properties moveable and immoveable to which he was entitled and which he by subsequent clauses in the will bequeathed to various beneficiaries and legatees, finally made a bequest in the following terms: "the sum which may be left after deducting the above-mentioned legacies and such other expenses shall be utilised in my name for pooja and other charities in Vytheswarar temple." Unknown to the testator there was a sum of Rs. 4,000 lying to his credit with the Registrar of the High Court which after his death was paid to his executor on his application. In this suit by the widow of the testator for administration of the estate. *Held*, that the sum of Rs. 4,000 was not disposed of even under the above residuary clause of the will, that the plaintiff was entitled to it as on an intestacy and that the executor was liable to account for the same from the date of the testator's death on the footing of a wilful default. The residuary clause in the form in which it appears in English wills is practically unknown to the ordinary testator in Madras and the rules of construction which have been laid down by English Courts are not applicable. KUNTHALAMMAL *v.* SURYAPRAKASAROYA MUDALIAR (1915)
I. L. R. 38 Mad. 1096

2. ——— *Construction of will of Parsi—Devise to two sons in equal shares—Gift over to son of elder son, if he should have one—Failure of male issue to elder son—Provision for adopted son on failure of natural son—Adoption after testator's death and according to Parsi custom three days after death of father—Gift over to grandson on attaining majority—Elder son surviving testator—Succession Act (X of 1865), s. 111.* A Parsi having two sons P and J made a will in 1866 in the following terms:—Cl. 2 stated "The said two sons are proprietors half and half alike and in equal (shares) of my whole estate, outstandings, debts, title and interest, and both the heirs living together are duly to enjoy the balance which may remain after the Sarkar's assessment. In this my testamentary writing I the testator have appointed my two sons as (my) heirs." Cl. 5 said that "P the elder son being in a confused state of mind," the management of the estate was entrusted to the younger son J "by his true and pure integrity, and both the heirs are to equally enjoy half and half alike the whole estate with equanimity with my elder son P in such a way as not to injure his (P's) rights. At present my elder son P. has no male issue of his body. (He) has only a daughter. Therefore if my elder son P gets a male issue half of the estate is to be made over to him on his attaining his full age." Cl. 11, after prohibiting any alienation of the property, continued, "If my son P does not get a son J is to give away his son as P's *palak* (or adopted son). All the clauses of this will are applicable to the said adopted son. If a son be born of the body of

WILL—*contd.*

1. CONSTRUCTION—*concld.*

P he (shall) on attaining (his) full age be the owner of a half share of the whole of the immoveable and moveable estate belonging to me . . . . all the clauses written in this will are applicable to the said son of (his body)." The testator died on 21st August 1866 leaving his two sons, and J entered upon the management of the estate having obtained probate of the will in 1867. P was twice married but had no son. He died in 1897 leaving a widow and other representatives his heirs according to the Parsi Intestate Succession Act (XXI of 1865) who brought a suit to ascertain the rights and interests of the parties in the estate and for partition, basing their claim on P.'s right as the owner of one-half of the estate from the date of the testator's death. The defendants were J and his son B who was five years old at the death of the testator, and who it was alleged had been, though not in the testator's life-time, adopted as the *palak* son of P. and, as the defendants contended, succeeded under the will to the half share of the estate which P had enjoyed though on the terms of the will it had never vested in P. *Held*, (affirming the decisions of the Courts below), that the proper interpretation of the will in the events that had happened was that the date of distribution was the death of the testator, at which date one-half of the estate vested in P. The destination over to a son who should take upon attaining majority would be using language appropriate to the events of the death of P during the life-time of the testator, and of his having left a son—the situation also being provided for of that son not having at that time attained majority. But when P himself survived the testator there were no words in the will sufficient to cut down the right of P to one-half the estate, to a tenancy for life, or a less period therein according to the appellant's contention. On the contrary the words employed appeared suitable to the case of the entire estate being, on the testator's death, divided into two portions, and of each portion then becoming the absolute property of one of the two sons of the testator. The same result was arrived at by the application of s. 111 of the Indian Succession Act which their Lordships agreed with the Courts below was applicable. JEHANGIR DADABHOY *v.* KAIKHUSRU KAVASHA (1914)

I. L. R. 39 Bom. 296

2. PROBATE.

1. ——————— *Probate, application for—Onus—Testamentary capacity, what is—Probate granted by Trial Court, reversed by Appellate Court—Appellate Court, when should differ from Trial Court's estimate of evidence—Signature, genuineness of, proof of—Witnesses of competency, opinion of, value of—Witness, important, but expected to be hostile, how to be examined.* Where there appeared a striking resemblance between the signatures on the will and certain admitted signatures of the alleged testator, but not that

WILL—*contd.*

2. PROBATE—*contd.*

absolute identity which, in many instances, may furnish indications of deliberate imitation by the careful forger, the High Court agreed with the Trial Court on the evidence in finding that the signatures were genuine. Where, from the evidence, it appeared that the illness of the testator had caused serious anxiety to his relations at least three days before his death and that on the day of his death, his condition was such as to necessitate the attendance of three physicians on five occasions, and the will was alleged to have been executed about two hours before his death: *Held*, that in the circumstances the Court was bound to scrutinise with care and caution the evidence as to his testamentary capacity at the time when he was said to have executed the will. That the burden was upon the propounders of the will to show that the testator had testamentary capacity, *i.e.*, capacity to comprehend the nature and effect of his act; to discharge this burden, it was not enough to show that the testator was conscious when he executed the will or that he was able to maintain an ordinary conversation and to answer familiar and easy questions. It must be shown that he was able to dispose of his property with understanding and reason, that he was able to realise his position, to appreciate his property and to form a judgment with respect to the parties whom he decided to benefit. The opinion of witnesses as to competency is entitled to little regard, unless supported by good reasons founded on facts which warrant them. Where the propounders of a will had reason to suppose that an important witness could not be trusted to tell the truth, they might have asked the Court to summon him with liberty to both parties to cross-examine him, if necessary. A Court will not reject a will merely because its terms appear extraordinary against clear evidence of due execution by a competent testator. But where the terms are unusual and the evidence of testamentary capacity doubtful, the vigilance of the Court will be roused and before pronouncing for the will the Court will require to be satisfied beyond all reasonable doubt that the testator was fully cognizant of its contents and in a condition to exercise, and did exercise, thought, judgment and reflection respecting the act he was doing. *Bulli Kunwar* v. *Bhagirathi, 9 C. W. N. 649, Sefton* v. *Hopwood, 1 F. F. 579, Marsh* v. *Tyrrell, 2 Hagg. Ecc. Rep. 84, 122, Dufaur* v. *Croft, 3 Moo. P. C. 136,* and *Harwood* v. *Baker, 3 Moo. P. C. 282,* referred to. The principle that a Court of Appeal should be extremely slow to disagree with the primary Court on a question of appreciation of oral evidence embodies a general rule, but is not of universal application. Where the Trial Court had found in favour of the will, but its decision was vitiated by its failure to test the evidence from the standpoint of the fundamental principle that the testator must be of sound and discerning mind and memory, so as to be capable of making a disposition of his property with sense

WILL—*contd.*

2. PROBATE—*contd.*

and judgment, in reference to the situation and amount of such property and to the relative claims of different persons who were or might be the objects of his bounty, the High Court on appeal reversed that decision not so much because it formed a different estimate of the credibility of the witnesses for the propounders, but because it differed in its estimate of the effect of their statements on the assumption that they had spoken the truth. This evidence, in the opinion of the High Court, was insufficient to discharge the onus that rested on the applicants for probate. The nature of this onus discussed. *Baker* v. *Batt*, *2 Moo. P. C. 317*, and *Panton* v. *Williams*, *2 Curt. 530 ; 2 Notes of Cases, Sup. 21*, referred to. SUSIL KUMAR BANERJEE *v.* APSARI DEBI (1914) **19 C. W. N. 826**

2. ——————— *Probate—Issue of citations, object of—Citation of infant, effect of—Citation to infant and his mother, a minor—No opposition to grant of probate—Competency of infant for revoking probate—Testator, testamentary capacity of—Onus of proof upon the executor—Probate and Administration Act (V of 1881).* Where one J died in 1901, leaving a widow S aged 14 years and a son D aged 2 months and it was alleged that J executed a will on the day previous to his death by which his three brothers G, B and M were appointed successive executors; and on G's application for probate of the will citations were issued on B and M as also upon S and D and there was no opposition and probate was granted to G in 1902; and in 1911, D, still an infant, applied through his mother S for the revocation of the probate on the ground that the alleged will had not been executed by his father J, and the District Judge without formally revoking the probate called upon the executor to prove the will in the presence of the objector and held upon the evidence that the original grant should not be revoked: *Held*, that service of notice upon the infant D, and his mother S, a minor, was not proper service upon them, and was useless for the protection of the interest of the infant and as such D was competent to apply for revocation of probate through his mother. The object of the issue of the citation is that all persons whose interests are or may be adversely affected by the decree of the Probate Court shall have notice of the proceedings and an opportunity, should they choose to avail themselves of it, of intervening for the protection of their interests. *Held*, that this purpose was not achieved merely by issue of citations to infants and that in the circumstances of the present case, the appointment of an officer of the Court as guardian of the infant would not have afforded him any protection. *Rebells* v. *Rebells*, *2 C. W. N. 100*, *Shoroshibala* v. *Anandamoyee*, *12 C. W. N. 6*, and Mortimer on Probate, p. 535, referred to. A party who is cognizant of the proceedings and might have intervened is bound by their result and cannot be allowed to re-open them. *Komol Lochan Dutta* v. *Nilruttun*

WILL—*contd.*

2. PROBATE—*concld.*

Mundle, *I. L. R. 4 Calc. 360*, *Brinda Chowdhurani* v. *Radhica Chowdhurani*, *I. L. R. 11 Calc. 492*, *Nistarini Dabia* v. *Brahmomoyi*, *I. L. R. 18 Calc. 45*, *In the goods of Bhuggobutty Dasi*, *I. L. R. 27 Calc. 927*, *Durgagati Debi* v. *Sourabini Debi*, *10 C. W. N. 995 : s. c. I. L. R. 33 Calc. 1001*, *Newell* v. *Weeks*, *2 Phill. 224*, *Ratcliffe* v. *Barnes*, *2 Sw. & Tr. 436*, *Wytcherley* v. *Andrews*, *L. R. 2 P. D. 327*, and *Bell* v. *Armstrong*, *1 Add. 372*, referred to. *Held*, that this rule of law did not apply to the circumstances of the present case. Even in cases where a party has upon notice failed to appear and contest the proceedings, the Court may, for sufficient reason, allow the proceedings to be re-opened. *Young* v. *Halloway*, [*1895*] *P. 87*, *Peters* v. *Tilly*, *11 P. D. 145*, and *Ritchie* v. *Malcolm*, [*1902*] *2 I. R. 403*, referred to. *Held*, also, that the District Judge ought to have revoked the grant in the first instance and then called upon the executor to prove the will. *Brindaban* v. *Sureswar 10 C. L. J. 263*, and *Durgagati* v. *Sourabini*, *10 C. W. N. 995 : s. c. I. L. R. 33 Calc. 1001*, relied on. *Held*, further, on the evidence, that the testator had no testamentary capacity at the time when he was alleged to have executed the will. The High Court, in this view, revoked the grant on the probate. *Held*, also, that the onus was upon the executor to establish that the deceased had sound and disposing mind at the time when he was said to have executed the will. *Waring* v. *Waring*, *6 Moo. P. C. 355*, referred to. DWIJENDRA NATH SARMA PURKAYASTHA *v.* GOLOKE NATH SARMA PURKAYASTHA (1914) . **19 C. W. N. 747**

3. REVOCATION.

——————— *Revocation—Will lost—Presumption that it has been revoked how to be applied in India—Finding that will was revoked, based on presumption, upset in second appeal—Proof of will by copy taken from Registrar's office, without objection in the first Court—Objection on appeal that conditions for admission of secondary evidence not fulfilled, if admissible.* In view of the habits and conditions of the people of India, the rule laid down in *Welch* v. *Phillips*, *1 Moo. P. C. 299*, that when a will is traced to the possession of the deceased and is not forthcoming at his death the presumption is that he has discharged it, must be applied with considerable caution. Where in such circumstances the first Appellate Court held that the will had been revoked or cancelled, but on second appeal the Chief Court held that there was no sufficient evidence of revocation and that the more reasonable presumption was that the will was mislaid or lost or else stolen by one of the defendants after the death of the deceased: *Held*, that it was perfectly within the competency of the Chief Court to come to that finding. There was nothing definite to show that deceased who was a very old man and, towards the end of his life, imbecile, had any motive to destroy the will or was mentally competent to

WILL—*concld.*

3. REVOCATION—*concld.*

do so, whilst on the other hand there were circumstances which favoured the view that the will was either mislaid or stolen. *Held*, also, that the first Appellate Court should not have treated a copy of the will taken from the Registrar's office, which was filed and admitted in evidence in the first Court without objection, as inadmissible, on the ground that no sufficient foundation was laid for the admission in the first Court of secondary evidence—as, if such objection had been taken in the first Court, that Court would probably have seen that the deficiency was supplied. PADMAN *v.* HANWANTA (1915) 19 C. W. N. 929

WILL OF PARSI.

———— construction of—

See WILL—CONSTRUCTION. I. L. R. 39 Bom. 296

WINDING-UP.

See COMPANY. I. L. R. 39 Bom. 16, 47, 231

WITHDRAWAL.

See PARDON . I. L. R. 42 Calc. 756

WITHDRAWAL OF SUIT.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 373. I. L. R. 38 Mad. 643

WITNESS.

See ATTESTATION OF INSTRUMENT. I. L. R. 37 All. 350

See COMMITMENT. I. L. R. 42 Calc. 608

See CRIMINAL PROCEDURE CODE, S. 339. I. L. R. 37 All. 331

See PERJURY . I. L. R. 42 Calc. 240

See PUBLIC PROSECUTOR. 19 C. W. N. 28

———— cross-examination of—

See CHARGE . I. L. R. 42 Calc. 957

WOMEN.

———— disqualification of, to perform duties of archaka—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3. I. L. R. 38 Mad. 850

———— right to inherit—

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3. I. L. R. 38 Mad. 850

WORDS AND PHRASES.

———— "Agreement" or "memorandum of agreement"—

See STAMP ACT (II OF 1899). I. L. R. 38 Mad. 349

WORDS AND PHRASES—*contd.*

———— "at once"—

See COMPLAINT . I. L. R. 42 Calc. 19

———— "becomes due"—

See LIMITATION ACT (IX OF 1908), SCH. I, ART. 132 . . I. L. R. 37 All. 400

———— "by means thereof"—

See CHARGE . I. L. R. 42 Calc. 957

———— "case"—

See CRIMINAL PROCEDURE CODE, S. 193. I. L. R. 37 All. 286

———— "Collector"—

See MAMLATDARS' COURTS ACT (BOM. II OF 1906), S. 23. I. L. R. 39 Bom. 552

———— "contenticus suit"—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52 . I. L. R. 38 Mad. 450

———— "debt"—

See SUCCESSION CERTIFICATE. I. L. R. 42 Calc. 10

———— "destined"—

See TRADING WITH THE ENEMY. I. L. R. 42 Calc. 1094

———— "dues"—

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), SCH. II, ART. 13. I. L. R. 39 Bom. 131

———— "explosive substance"—

See CHARGE . I. L. R. 42 Calc. 957

———— "final"—

See MADRAS CITY MUNICIPAL ACT (III OF 1904), S. 287 (*3*). I. L. R. 38 Mad. 41

———— "fire arms"—

See MISJOINDER OF CHARGES. I. L. R. 42 Calc. 1153

———— "heir next in succession"—

See MATADARS ACT (BOM. VI OF 1887), SS. 9, 10 . . I. L. R. 39 Bom. 478

———— "holds office"—

See MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884), SS. 53 AND 60. I. L. R. 38 Mad. 879

———— "judgment"—

See APPEAL . I. L. R. 42 Calc. 735

———— "owner"—

See MADRAS ASSESSMENT OF LAND REVENUE ACT, S. 2. I. L. R. 38 Mad. 1128

———— "partial performance"—

See HINDU LAW—ALIENATION. I. L. R. 38 Mad. 1187

WORDS AND PHRASES—*concld.*

———— " possession "—

See CHARGE . I. L. R. 42 Calc. 957

———— " presumption of innocence "—

See CHARGE . I. L. R. 42 Calc. 957

———— " property "—

See PENAL CODE (ACT XLV OF 1860), S. 185 . . I. L. R. 37 All. 128

———— " public purpose "—

See RESUMPTION I. L. R. 39 Bom. 279

———— " putra "—

See HINDU LAW—INHERITANCE. I. L. R. 37 All. 604

———— " putra poutradi "—

See JAIGIR . I. L. R. 42 Calc. 305

———— " rights to sue "—

See CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 92 AND 93. I. L. R. 38 Mad. 1064

———— " same transaction "—

See CHARGE . I. L. R. 42 Calc. 957

———— " secured creditor "—

See PROVINCIAL INSOLVENCY ACT (III OF 1907), S. 31 . I. L. R. 37 All. 383

———— " seaworthiness "—

See BILL OF LADING. I. L. R. 38 Mad. 941

———— " secundum allegata et probata "—

See SPECIFIC RELIEF ACT (I OF 1877), S. 39 . . I. L. R. 39 Bom. 149

———— " single transaction "—

See ATTORNEY . I. L. R. 38 Mad. 134

———— " strict proof "—

See REVIEW . I. L. R. 42 Calc. 830

———— " subsequent transferee "—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 53. I. L. R. 39 Bom. 507

———— " suit for land or other immoveable property "—

See JURISDICTION. I. L. R. 42 Calc. 942

———— " tavazhi "—

See MALABAR LAW. I. L. R. 38 Mad. 48

———— " trading "—

See TRADING WITH THE ENEMY. I. L. R. 42 Calc. 1094

———— " unlawfully and maliciously "—

See CHARGE . I. L. R. 42 Calc. 957

WORKMAN'S BREACH OF CONTRACT ACT (XIII OF 1859).

———— *Bandsman not an artificer, labourer or workman.* A bandsman is not an artificer, labourer or a workman within the meaning of those words in the Workman's Breach of Contract Act (XIII of 1859). *Re* ROSARIO QUADROS (1913) . . I. L. R. 38 Mad. 551

WORSHIP.

See TURNS OF WORSHIP.

WRIT OF POSSESSION.

See BAILIFF . I. L. R. 42 Calc. 313

See PENAL CODE, S. 322. 19 C. W. N. 273

WRITTEN STATEMENT OF ACCUSED.

See CHARGE . I. L. R. 42 Calc. 957

See PENAL CODE, S. 80. 19 C. W. N. 1043

See PENAL CODE, S. 120B. 19 C. W. N. 676

———— *Practice.* Though written statements may be accepted from the accused in accordance with the universal practice in the Courts under the Calcutta High Court, they do not take the place of evidence nor of such examination of the accused as is contemplated by s. 342 of the Code of Criminal Procedure. *Emperor* v. *Ansuiya*, *(1903) All. W. N. 1*, dissented from. AMRITA LAL HAZRA *v.* EMPEROR (1915) I. L. R. 42 Calc. 957

WRONGFUL CONFINEMENT.

See MISJOINDER . I. L. R. 42 Calc. 760

WRONGFUL POSSESSION.

See SHEBAIT . I. L. R. 42 Calc. 244

WRONGFUL SEIZURE.

See ARREST OF SHIP. I. L. R. 42 Calc. 85

Z

ZAMINDAR.

———— grant by, to his wife and minor son—

See TRANSFER OF PROPERTY ACT (IV OF 1882), S. 10 . I. L. R. 38 Mad. 867

———— service to—

See MADRAS REGULATION (XXV OF 1802), S. 4 . I. L. R. 38 Mad. 620

ZAMINDAR AND INAMDAR.

———— pre-emption as to—

See MADRAS ESTATES LAND ACT (I OF 1908), SS. 188 AND 269. I. L. R. 38 Mad. 608

ZAMINDARI.

——— impartible, how far joint family property—

See HINDU LAW—ADOPTION.

I. L. R. 38 Mad. 1105

ZURPESHGI LEASE.

———*Occupancy right, raiyati interest, acquisition of—Previous possession as raiyat—Subsequent zurpeshgi lease, effect of.* The plaintiffs' suit was for recovery of possession of land which had been given in *zurpeshgi* to the defendant for a term of 15 years from 1301 to 1315 F. S., the terms of the *zurpeshgi* being as follows :—" It is desired that the said sahib ticcadar should take possession of the said land, make proper cultivation himself or get it cultivated by others, grow indigo seeds or any other indigo crop by using the land as his *khas zerait* or by settling the same with tenants according to his own desire and shall continue appropriating the proceeds thereof till the term of the ticca. He shall year by year deduct the said fixed *jama* in

ZURPESHGI LEASE—*concld.*

payment of the principal and interest of his *zurpeshgi* as per account given below and shall pay the remainder, the amount of lessor's rights payable to us, towards the end of the term of the ticca on taking receipts therefor from us. He shall conveniently cut and recover the indigo crops grown and standing on any quantity of land in 1315 F. S., when the term of the ticca pottah comes to an end, and shall pay ten annas rent for 1916 F. S. at Rs. 6-3-0 per bigha and shall give up possession of the said land." *Held*, that the *zurpeshgi* pottah did not create any raiyati interest in the defendant, far less a right of occupancy, and on the expiry of the term of the pottah the plaintiffs were entitled to get *khas* possession. That a raiyat by taking a *zurpeshgi* lease of land of which he was previously in possession as a raiyat, does not lose his raiyati status or divest himself of his right to acquire a right of occupancy in the land. LAL BAHADUR SAHI *v* MACKENZIE (1913) . . **19 C. W. N. 229**

CALCUTTA
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
8, HASTINGS STREET